

PERSONAL SEARCH REVIEW COMMISSION

**REPORT ON  
PERSONAL SEARCHES  
BY THE UNITED STATES  
CUSTOMS SERVICE**

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# Preface

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It is the mission of the United States Customs Service to ensure that all goods and persons entering and exiting the United States do so in compliance with all United States laws and regulations. Specifically, the Customs Service is responsible for collecting duties, taxes, and fees and preventing the illegal importation of merchandise, including narcotics, into the United States. As it has executed this mission, the Customs Service has been questioned and criticized for using procedures that appear to have a certain level of bias and ethnic stereotyping in the selection of passengers for personal searches at ports of entry.

In response to these complaints, Customs Service Commissioner Raymond W. Kelly has taken several steps,<sup>1</sup> including the appointment, in April 1999, of a short-term external review group, the Personal Search Review Commission. The Commission was asked to consider several issues and report the findings to Commissioner Kelly.<sup>2</sup> Simply stated, those issues were:

Are/were there problems and negative perceptions with regard to personal search procedures by Customs at United States airports? To what extent is there racial profiling by Customs Service officials?<sup>3</sup>

- What is the background, including the authority, role, and responsibility of the Customs Service, with regard to personal searches at airports, and how are those responsibilities executed?
- Are the initiatives established recently within the Customs Service adequate to address any problems that may have existed?
- What steps should be taken to improve personal search processing by the Customs Service to address any problems in the future?

The Commission was composed of four non-Customs federal government officials: Hubert T. Bell, Ana Maria Salazar, Robin Renee Sanders, and Constance Berry Newman, Chair.<sup>4</sup> In addition, Sanford Cloud, Jr., served as independent adviser to the Commissioner.

At the outset, the Commission members agreed on the primary lines of inquiry and the sources of information they needed to prepare a baseline report to the Commissioner.

The original timeframe of the Commission's inquiry was six months, with a report to the Commissioner before the end of August. Because the Commissioners decided

to expand their inquiry to include visits to 14 airports; however, the report was not submitted to the Commissioner until early 2000.

Given the short time for the inquiry, Commission members used two basic methods: interviewing Customs Service officials at major airports and headquarters and reviewing secondary and other resource materials.<sup>5</sup> It is important to note that during the period of the review, Customs officials under the leadership of Commissioner Kelly were making key changes in the way the Customs Service executed its responsibilities. To the extent that it was feasible within the timeframe of the review, the Commission reviewed the new approaches to personal searches of passengers to determine to what extent they could address concerns about the way the Service operates.

As stated above, the Commission members visited a total of 14 airports, which<sup>6</sup> represent the port of entry of 66.1 percent of the air passengers arriving in the United States. The Commission members interviewed more than 200 people in the field.<sup>7</sup> In addition, they interviewed members of the headquarters staff and leaders of the National Treasury Employees Union. The Commission members reviewed passenger complaints, Congressional testimony, court cases, previous reports, and relevant Customs documents and materials.

This report is organized as outlined below. The appendices provide a more detailed listing of the issues considered and the interview guidelines used in preparation of the report.

Section 1 describes the basic inquiry. The primary topic was the nature and the extent of the allegations by passengers about the Customs Service's personal search policies and procedures.

Section 2 reviews the Customs Services enforcement authority and responsibility with regard to international passenger entry and personal search activities. In preparing this section, the Commission reviewed summary statistics that document the nature, extent, and impact of personal searches of passengers by the Customs Service.

Section 3 outlines three major categories of issues considered by the Commission, along with the Commission's findings and recommendations in each category.

- Category 1 issues address the effectiveness of the personal search processing policies and procedures, as well as their implementation. Among the sub-issues considered in this category is the following question: Is there built-in accountability throughout the organization for effectiveness and conformance to the regulations and policies of the Customs Service?
- Category 2 issues go to the heart of some of the allegations and address the questions: Does racial and ethnic profiling occur in the Customs Service as a part of passenger processing procedures? How? Where? Based on what authorities and procedures? The Customs Service says it does not use profiling, but rather uses indicators or observation techniques as one of six ways to identify passen-

gers for searches. What is the difference between profiling and indicators/observation techniques?

Category 2 issues also focus on the manner in which the Customs Service handles allegations of abuses in passenger processing procedures when balancing the enforcement of the law to protect the national interest against the need to protect the rights of individuals.

- Category 3 issues consider the effectiveness of the new Customs Service approaches to personal searches. Among the specific topics covered under this category are the new approval processes, training initiatives, passenger information, passenger complaints, and data collection and analysis.

This section of the report also considers additional initiatives, procedures, and recommendations for the future. Among the steps under review for future initiatives are further review of the extent and composition of training, improved identification of inspectors, and potential contributions to effective personal search procedures by the airlines, the media, and airport authorities.

# 1

## The Basic Inquiry

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**The primary question considered here is: What are the allegations about the Customs Service's personal search passenger policies and procedures?**

### Allegations about racial profiling

**Allegations have been made that the Customs Service uses racial and ethnic profiling in determining who is to be further questioned or searched at airports. A more pointed accusation has been that the Customs Service has particularly stereotyped and profiled African American and Hispanic women for unprofessional, intrusive, and inhumane personal searches.**

**Examples from Congressional testimony, legal cases, formal and informal complaints, and observations from the general public indicate both real and perceived problems within the Customs Service's personal search policies and procedures.**

**Opening statements and testimony before the House Committee on Ways and Means, Subcommittee on Oversight, on Customs Service passenger inspection operations provided examples of concerns about the search policies and procedures. At the May 20, 1999, hearing, Representative Amo Houghton (R-N.Y.) said: "Over the past few months we have heard serious allegations that the Customs Service has unfairly targeted Black and Hispanic air passengers for personal searches based on their race." Representative William J. Coyne (D-Pa.) said: "What is clear to all of us...is that a significant number of U.S. citizens strongly believe that at some U.S. airports, one or more Customs agents are selecting passengers for intrusive physical searches based on their race." Representative John Lewis (D-Ga.), who requested the hearing, said: "Allegations of racial profiling by Customs inspectors raise very serious concerns regarding the treatment of international travelers, especially people of color."**

**Among those testifying before the House Subcommittee was Amanda Burtica, a Hispanic passenger, who won a civil judgment of \$450,000 from the Customs Service for a 1994 incident. She testified about a demeaning and intrusive search and said: "Nobody should have to go through what I went through." Janneral Denson, an African American woman, pregnant in February 1997, testified about an exten-**

sive personal search including body cavity searches, handcuffing, forced ingestion of laxatives, and inability to make a phone call to her mother or her lawyer. Both women were found not to have drugs on or in them.<sup>8</sup>

Other statements on this issue come from attorney Edward M. Fox, who is representing 90 African American women who have alleged degrading pat downs, body searches, visual cavity searches, physical cavity searches, and X-rays at O'Hare Airport in Chicago.<sup>9</sup> Fox's statements that highlight the issue are as follows:

- "It quickly became apparent that there was a racial component to the searches. Only African American women were calling (me). Additionally, many of them recounted stories of seeing only other African American women in the 'Secondary' area where further questioning and searching are commenced."
- "It is disturbing and absolutely true that often Customs recommends searches for these African American women based solely on the amount of travel they do."

Another example of the treatment of passengers by Customs officials is covered in a January 1998 letter that alleged rude, unprofessional, and demeaning treatment of a passenger at one of the airports. The information that the letter-writer sought from the Service gives an idea of the nature and extent of the concerns of some members of the public.<sup>10</sup> The information sought included:

- the names and positions of the agents involved.
- whether a report was prepared on the incident and the disposition of the report.
- the factual basis that gave the inspectors reasonable suspicion to conduct an intrusive body search of the individual.
- whether the Customs Service uses one or more profiles in determining who should be subjected to a body search.
- whether agents of the Customs Service are instructed to or trained to verbally abuse and inflict emotional stress on U.S. citizens.
- whether the Customs Service keeps records of the sex, age, type of baggage, and/or other characteristics of persons who are subjected to body search.

## Allegations about unnecessary and ineffective searches

Questions have been raised about the effectiveness of the personal searches. The question that needs to be addressed is whether the Customs anti-drug enforcement efforts at the airports are an effective component of the national anti-drug strategy. The Commission did not draw conclusions about this line of inquiry. However, we did consider the data in order to provide a context within which our primary findings were to be considered.



**According to the Customs Service, on a typical day the Service examines:<sup>11</sup>**

- **1.3 million passengers.**
- **2,542 aircraft.**
- **more than 341,000 vehicles.**
- **more than 45,000 trucks/containers.**
- **550 vessels.**

**On a typical day, the Customs Service handles:**

- **67 arrests.**
- **115 narcotics seizures.**
- **12 currency seizures.**
- **143 other enforcement seizures of conveyances, ammunition, commercial merchandise, real estate, firearms, and child pornography.**

**On a typical day, the Customs Service seizes:**

- **3,925 pounds of narcotics.**
- **\$1.2 million in U.S. currency.**
- **\$368,000 in conveyances.**
- **\$24,000 in arms and ammunition.**
- **\$554,000 in commercial merchandise.**

**In fiscal year 1999, more than 75 million people traveled by air, 394 million by land, and 9 million by sea.**

**The table below provides some basic statistics covering passenger operations in fiscal year 1999. These seizures are from commercial air passengers in-bound from airports.**

FY 1999 Seizures	Number of Seizures	Pounds
Heroin	394	1,185
Cocaine	579	3,729
Marijuana	1,152	1,959

**During the period between October 1, 1998, and March 31, 1999, 70 percent of all heroin seizures were the result of positive searches of air passengers.<sup>12</sup> During the same period, 38 percent of all cocaine seizures were the result of positive personal search of air passengers.**

**Based on the magnitude and scope of the Customs seizures, it appears that anti-drug efforts at the point of entry are an important component of the national anti-drug strategy. What this report seeks to determine is whether the procedures used are balanced with the need to protect individual rights. This question leads to the kinds of recommendations we have made here, and in particular to Recommendation 1.**

# 2

## Background on the Customs Service's Processing of Passengers

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### U.S. Customs authority and responsibility with regard to passenger entry

The authority of the Customs Service to conduct personal searches at ports of entry is derived from the First Congress,<sup>13</sup> allowed by the Constitution,<sup>14</sup> specified in the Tariff Act of 1930 (19 USC 482 and 1582), and confirmed in court decisions. Those authorities give Customs officers the right to stop, question, and examine anyone entering the United States. This enforcement authority supports the national interest in preventing contraband from being smuggled into the United States.

19 USC 482 authorizes Customs officers to search and seize persons at the border that they suspect of carrying merchandise subject to duty or merchandise imported illegally. 19 USC 1582 provides that the Secretary of the Treasury may prescribe regulations for the search of persons and baggage under which all persons coming in to the United States shall be liable to detention and search by officers of the Government.

Border searches are a well-recognized and long-established exception to the probable cause and warrant requirements of the Fourth Amendment. Even so, the conduct of border searches, as with any search, must be reasonable. The courts have consistently found that the government is allowed significant leeway "pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country."

The Supreme Court stated (*United States v. Ramsey*, 431 U.S. 606, 616, 619 (1972)) that: "Border searches...have been considered to be 'reasonable' by the single fact that the person or item in question had entered into our country from outside." In those searches (*United States v. Montoya de Hernandez*, 473 U.S. 531,

**539-40 (1985)), the balance between the sovereign's interests at the border and the privacy rights of international travelers is struck more favorably to the government.<sup>15</sup>**

## Basic statistical data on passenger processing

**Section 1 of this report included some basic information on the Customs Service's workload. The table below provides data on searches by sex, race, and ethnic background.<sup>16</sup> No conclusions are drawn about this data. It is provided to give a context within which the Commission considered its findings on the primary issues.**

	Data Category	Total Number	% of Total
Sept. 96-	International Travelers	69,000,000	
Sept. 97	Total Subject to Body Search	42,474	0.0006
	Pat Down	39,990	0.0006
	Cavity	14	0.0000002
	Immediate Pat Down	81	0.000001
	X-ray	693	0.00001
	Positive Searches	1,763	0.00003
	Negative Searches	37,277	0.0005
	Percentage of the Positive Searches		
	Blacks	392	22.0
	Latinos	345	20.0
	Whites	664	38.0
	Percentage of the Negative Searches		
	Blacks	4,838	13.0
	Latinos	12,572	33.0
	Whites	9,597	28.0
Sept. 97-	International Travelers	71,558,239	
Sept. 98	Total Subject to Body Search	46,303	0.0006
	Pat Downs	43,482	93.9
	Cavity	13	0.00028
	Immediate Pat Downs	118	0.0025
	X-ray	724	0.015
	Positive Searches	1,517	0.032
	Negative Searches	41,412	0.00057
	Percentage of the Positive Searches		
	Blacks	363	24.0
	Latinos	218	14.0
	Whites	682	45.0

***Report on Personal Searches by the United States Customs Service***

	Data Category	Total Number	% of Total
Percentage of the Negative Searches			
	Blacks	5,628	14.0
	Latinos	14,575	35.0
	Whites	10,821	26.0
Sept. 98-	International Travelers	75,539,692	
Sept. 99	Total Subject To Body Search	25,855	0.0003
	Pat Down	23,593	0.0003
	Cavity	24	0.0000003
	Immediate Pat Down	2389	0.000003
	X-ray	667	0.000008
	Positive Searches	1,318	0.00002
	Negative Searches	21,473	0.0003
Percentage of the Positive Searches			
	Blacks	356	27.0
	Latinos	218	17.0
	Whites	552	42.0
Percentage of the Negative Searches			
	Blacks	3,833	18.0
	Latinos	6,464	30.0
	Whites	6,582	31.0

# 3

## Issues, Findings, and Recommendations

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**This section outlines three major categories of issues considered by the Commission, along with the Commission's findings and recommendations.**

The category 1 issues address the effectiveness of the personal search processing policies and procedures and their implementation.

**Among the sub-issues considered in this category is the following: Is there built-in accountability throughout the Customs Service organization for effectiveness, conformance to the regulations and policies, and treatment of passengers?**

**Other, more detailed questions that the Commission considered in drawing conclusions about the effectiveness of the personal search processing policies and procedures and their implementation were as follows:**

- **Are the passenger processing procedures effective?**
- **Are the facilities proper and accommodating to the passengers?**
- **Do the passengers have to leave the port for certain types of searches? Is this necessary? What are the options?**
- **Do the Customs officials adequately respond to the questions of passengers? Is the amount of information given by Customs officials limited by a concern that drug smugglers would benefit from the additional information?**
- **Are the passenger service representatives effective?**
- **What is the quality of the information provided to passengers?**
- **What are the rules for allowing passengers who are searched to make phone calls or to contact traveling or waiting companions? Are the rules properly implemented?**
- **Is the complaint process effective?**

These questions were not answered separately in this report, but they were considered by the Commissioners in their inquiry, and interviewees' responses helped to inform the recommendations on these issues. The Commissioners did gain certain impressions and answered many questions during our visits to the 14 airports and the interviews at headquarters.

We all noted that there are many extremely dedicated people carrying out the policies and enforcement responsibilities, as they understand them, in a professional manner.

Commissioner Kelly has already undertaken impressive changes.<sup>17</sup> We reviewed the major changes in policies to determine the extent to which they addressed our findings. We have commented on those changes in policies in this report. However, it was too early to evaluate the effectiveness of the implementation of the policies. Such evaluation should be built into the on-going monitoring of the agency under the leadership of the Customs Service.

Background on the findings about the effectiveness of the personal search policies and procedures

The Customs Service describes its mission as follows: "We are the guardians of our Nation's borders—America's frontline. We serve and protect the American public with integrity, innovation, and pride. We enforce the laws of the United States, safeguard the revenue, and foster lawful international trade and travel."

In a Customs interim status report presented in May 1999 covering the air passenger customer satisfaction survey conducted at 8 of the top 23 airports between 1998 and 1999, most people interviewed were confident that the Customs process prevents illegal activities because the officers are well-trained and the process is thorough. This particular survey did not identify findings of respondents by race or ethnic origin. The basic findings were as follows:

- Ninety-six percent of the 2,340 individuals surveyed indicated that the Customs Service personnel represented professionalism, defined as doing their jobs and being polite. Eighty-one persons found the Customs personnel somewhat unprofessional, and 5 found them very unprofessional. The major reasons given for identifying the personnel as unprofessional were negative attitudes (41 people), unhelpful, rude comments, not attentive, poor grooming, chewing gum, unfriendly.
- Seventy-five percent of the 2,340 agreed that the Customs Service areas of the airports were effective, and 20 percent were neutral on this point. The best part of the arrival process, according to those surveyed, was the rapid turnaround and

the polite officials. The worst part of the arrival process was nothing in particular (56%) and waiting for their bags (20%).

- The individuals surveyed were generally familiar with the Customs Service requirements and could distinguish between the Customs Service and the Immigration and Naturalization Service. However, fewer than 30 percent could distinguish between United States Customs and the United States Department of Agriculture.
- The people who were sent to the secondary process section (where passengers are questioned further) answered the survey question "Why do you think you went through the secondary process?" The answers were as follows: don't know (35%); information on the form (25%); random inspection (16%); other reasons, including color of skin, language, travel a lot, prior seizure (11%), or fit a profile (7%). When asked: "What can be done to avoid secondary?" they answered: nothing (70%); don't know (18%)
- The recommendations for improvement of the Customs processing procedures by those surveyed were: nothing (49%); more enforcement (17%); use more technology (10%). Other recommendations included: improve immigration, eliminate the declaration form, improve the signage, and improve inspectors' attitude.

## Specific Findings and Recommendations

Finding 1: The public's understanding and acceptance of Customs Service responsibilities

**Even though the May 1999 survey indicates that the Customs Service personnel performed in a professional manner, a basic issue has not been adequately addressed: whether there is a proper balance between protection of the rights of the individual against intrusive personal searches and effective seizure of drugs.**

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Recommendation 1: The Customs Service should initiate a high-level policy discussion on this issue to include federal counter-narcotics policymakers, enforcement officials, and the public at large. The Customs Service could understand the public's view of this issue better if the Service conducted surveys or used focus groups organized by the port directors or the Customs Management Centers and established a central reporting system to inform them of possible policy changes. The reports of the surveys and focus groups should identify the race/ethnic origin of the respondents.

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Finding 2: The accountability process

**In the past, the accountability covering the personal search processes throughout the organization seemed weak. Further, it was not clear how the U.S. Attorneys should be held accountable for their role in the process. Only recently, under Com-**



missioner Kelly, the directors of the Customs Management Centers,<sup>18</sup> the port directors, and Customs supervisors have become more directly involved in supervising and monitoring the personal search actions on the front line.<sup>19</sup>

One way that accountability is often determined is through the performance management system. The present performance agreement for managers and supervisors is general, in that it covers all managers and supervisors.<sup>20</sup> It is left to the employee and supervisor to outline the specific program/mission objectives. This is as expected. Among the critical areas in the performance review process are competencies in business practices, leadership/management practices, and values. Another critical area is equal employment opportunity, to ensure fairness and equity in the workplace. We did not review the extent to which the appraisal process is real or pro forma. We noted, however, that the appraisal forms do not include comments on the performance of employees with respect to the new rules on personal searches of passengers.

In March 1999, the Commissioner issued a document implementing a self-inspection program to verify that the Customs mission is being performed in the most effective and efficient way.<sup>21</sup> The Core Areas for Airport Personal Search Policy and Passenger Operations cover the personal search policies.

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Recommendation 2: To ensure accountability throughout, the Customs Service needs to specifically identify in the performance management system a way of evaluating the sensitivity of Customs personnel in dealing with the public, particularly in personal search activities. Therefore, human resources/personnel experts should work with Customs Service management to ensure that the performance management system effectively monitors the execution and supervision of a proper personal search system.

There should also be a review of the self-inspection program to determine the extent to which the new directions ensure greater accountability for conformance to the new personal search policies.

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Finding 3: The passenger's rights and the role of the U.S. Attorney in assuring that these rights are protected

**There appears to be a weakness in accountability in aspects of the legal system that go beyond the authority of the U.S. Customs Service and reside with the U.S. Attorneys. Granted, border searches are a well-recognized and long-established exception to the probable cause and warrant requirements of the Fourth Amendment. However, there are limits.**

**The courts have required notification to the U.S. Attorney to seek judicial approval of detention and notification to private counsel or a public defender.**

- ***U.S. v. Esieke* 940 F2d 29, 36 (2d Cir) cert. denied, 502 U.S. 992 (1991) had a 24-hour requirement.**
- ***U.S. v. Onumonu*, 967 F2d 782, 790 (2d Cir 1992) had a 24-hour requirement.**
- ***U.S. v. Adekunle*, 2 F3d 559, 561 (5th Cir 1993) required a reasonable time, essentially 48 hours. There the Court of Appeals for the Fifth Circuit stated: “We cannot...countenance the absurdity that one may have his liberty restrained for a longer period based on a mere suspicion than he lawfully could be detained based on probable cause.” The court added: “Under basic Fourth Amendment principles, the government, after detaining a suspected alimentary canal smuggler, must seek a judicial determination, within a reasonable period, that reasonable suspicion exists to support the detention.”**

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Recommendation 3: To ensure that the rights of the passengers are adequately protected with every power within the legal system, we recommend that Customs officials contact the U.S. Attorney’s office to seek judicial approval at the first opportunity after they determine that a passenger should be detained on reasonable suspicion of being an internal carrier. Initially we believed that the notification should occur no later than four hours from the initial detention for a personal search. We recognize that the new agreement between the Department of the Treasury and the Department of Justice provides for an eight-hour time limit.<sup>22</sup> This time limit should be monitored within the next year to determine if the agreed-upon time adequately addresses the issues raised in this report.

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#### Finding 4: The staffing levels in the Customs Service

**The Customs Service rank and file and supervisors have complained about understaffing and lack of overtime pay. They believe this understaffing leads to frustrations in the workforce, which they say could account for some of the rudeness to passengers.**

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Recommendation 4: Even though the staffing levels may explain rude treatment of passengers, it is never acceptable behavior. It should be addressed as an issue in the hiring, training, and performance evaluation of all personnel. However, it will be useful for the Service to analyze the minimum staffing requirements for effective processing of passengers and dealing with passenger complaints as the volume of passengers increases.<sup>23</sup> It will be important to be on record with those requirements with the Office of Management and Budget and the Congressional committees.<sup>24</sup>

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Finding 5: The information provided to passengers by the Customs Service

**Some of the problems the Customs Service has had are related to the limited amount of information provided to passengers about the personal search process and the passenger's rights during Customs border searches. The Customs Service has recognized this as a problem and has contracted with a private consulting firm to review the communications strategy as a separate issue, and it is in the process of implementing the recommendations of that firm. It is important to note that some of the inspectors interviewed are concerned about informing passengers of the reasons they were selected for secondary searches for fear that this would reduce the effectiveness of the Service's seizures of narcotics.**

**We know that the intent under the new policies and procedures is to increase the transparency and information provided to the passengers. However, we are concerned that the Service will be reluctant to implement in the field the new guidance to inform the passengers of the reasons and purposes of the searches. Some of the Commission members, based on their interviews, concluded that there is not a clear understanding in the Service of what rights passengers do have.**

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Recommendation 5: The Customs Service should state in writing its policy on informing passengers of their rights and the personal search process.<sup>25</sup> The chief counsel needs to work with the public affairs staff to add more to the informational brochures and to the training on passengers' rights. The new directions on passenger information in the new Personal Search Handbook should be emphasized in the training of all personnel. Further, Customs officials should have access to counsel during the process so that they will have legal guidance on informing passengers of their rights. The Commissioner should ask the chief counsel to look into the issue of passenger rights and ensure that all Customs officials are aware of the nature of those rights. The implementation should be monitored.

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Finding 6: Informational signs

**Improvements in informational signs have been made in some of the airports, but more improvement is required.<sup>26</sup> At most of the airports visited by the Commissioners, the information and passenger service representative placards were not placed where incoming passengers could readily see and read them or understand that they are connected to the Customs Service process. In some cases, the signage is behind the secondary area—the area where people are most nervous and least likely to benefit from such information. In other airports, placards were on top of the baggage carousel, but here too passengers were not reading them or realizing that they contained Customs information. The same problem occurs with information about passenger service representatives. That information is not placed where**

**passengers can read it, nor does the information identify the passenger service representative as a Customs employee and someone who can help passengers.**

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Recommendation 6: The Customs Service needs to work with the airport authorities to improve the location of the signs and review/update current signs to give passengers a better idea of their rights. Furthermore, the signs referring to the passenger service representatives need to be better placed and clearly state the role and responsibility of the passenger service representatives, specifically their responsibility to assist passengers during Customs processing.

Also, Customs needs to make an effort to include other languages in the signs and other information forms. One option would be for the Customs Service to work with the airport authorities to identify locations and install automated electronic display devices, with key information rotated through in several languages, in strategic places such as above the baggage carousel or in other spots in the baggage area.

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#### Finding 7: The privacy of passengers

**Lack of privacy for the people identified for secondary searches (the area where passengers are further questioned) continues to be a problem in some of the airports, sometimes for lack of space.**

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Recommendation 7: The airport authorities should be persuaded to play a greater role in assisting the Customs Service in developing a proper and private environment for the secondary searches in all airports. We encourage more conferences with selected authorities to address issues of mutual interest, resulting in greater privacy for the passengers. In the interim, the Customs Service should review its current space and provide greater privacy there.

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#### Finding 8: The passenger service representative program

**In 1992, the passenger service representative program was informally established to serve as an additional resource in the airports for providing customer service in a professional manner, answering questions, and making passengers aware of entry requirements. In June 1999, the policy governing the passenger service representatives was revised.<sup>27</sup> Still, it is not clear whether the traveling public knows about or understands the role of the passenger service representatives.**

Recommendation 8: Customs should take strong steps to explain to passengers the role of the passenger service representatives. Further, the representatives should make recommendations to the Commissioner on how their roles could be strengthened even beyond the most recent changes. This may mean including the passenger service representatives when and where a passenger has complained about the personal search process. This means that the passenger service representatives may be present when the supervisors are reviewing complaints, even if as observers.

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The category 2 issues go to the heart of some of the allegations and ask: Does racial and ethnic profiling occur in the Customs Service as a part of passenger processing procedures? How? Where? Based on what authorities?

**Even though the observational technique and not racial profiling is one of the articulable factors, some passengers complain about the passenger processing procedures. The reason for the complaints is that there is a higher percentage of minorities being subjected to a secondary and body searches than is probably their percentage of the traveling public.**

#### Finding 9: Racial profiling

**We operated on the assumption that racial profiling is a technique whereby a set of characteristics of a particular class or race or ethnic origin of a person is inferred from past experience or stereotypes, and data holdings are then searched for individuals with a close fit to that set of characteristics. The Customs Service says it does not use racial and ethnic profiling as part of the passenger processing procedures or any other procedures. Instead, it operates on experience, expertise, intuition, training, information on smuggling trends, and the pattern of past seizures. Its officers observe behavior and physical condition, ask questions, and analyze documents. What is clear, however, is that these articulable factors and observation techniques were developed by Customs and then passed forward in the Customs system. They have never been reviewed by an outside professional expert (e.g., a psychologist or sociologist) to see if they are stereotypical or could contain stereotypes.<sup>28</sup>**

**Officials stated their own concerns as follows:**

- **They are keenly aware of their responsibility in stopping the flow of drugs into the United States.**
- **They also are concerned about the Service's reputation and the publicity surrounding the numerous allegations of racial profiling.**
- **They are concerned about the possible effect the allegations and responsive policy changes could have on the performance of their law enforcement duties.**

**Some Customs officers interviewed have expressed disapproval of the decisions of their colleagues that led to passenger searches that caused the recent publicity and are now under scrutiny and litigation. Officers have commented that with similar facts they would not have proceeded with cavity searches, X-rays, body searches, or monitoring of bowel movements. Many suggest that the lack of judgment is a result of lack of experience and adequate supervision. Part of the present response to the internal and external concerns is to increase the role of supervisors in decision-making. It is our view that any changes in procedures that increase the role of supervisors and possibly the role of passenger service representatives in these decisions are steps in the right direction.**

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Recommendation 9: Because some segments of the public will not believe that there is a great difference between racial profiling and using an articulable factor list, the Customs Service needs to explain clearly that the kinds of indicators it finds through experience support secondary questioning and a body search. It does not seem that sharing general information (not specific details) with the public would reduce the number of seizures. Furthermore, it seems that general disclosure would improve the public's understanding and respect for the role and responsibilities of the Service. It will also be very important for the articulable factors, including observational techniques, to be reviewed by professionals outside of the Customs Service to determine whether they are based on stereotypes, and for the findings of that review to be made public.

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#### Finding 10: The use of observational techniques as one of the articulable factors

**The guidance and training for inspectors cover the rationale for secondary searches allowing for the use of articulable factors (observation techniques) as one of the six bases for searches.<sup>29</sup> The observation techniques have been developed over time by inspections and passed on through in-house training. These factors have been infrequently reviewed within the Service and rarely reviewed by non-Customs Service professionals. Officers in the field recommended that the list be reviewed periodically to revalidate it.**

**In March 1999, the Assistant Commissioner, Field Operations, established a committee to review the targeting criteria used in air passenger processing. In June, that committee issued a report that proposed significant changes in the methodology of selecting and targeting passengers for personal search.**

**Several observations need to be stated about the proposed changes in policy: (1) It is too early to tell the extent to which the recommendations, now policy, will actually be implemented across-the-board and become institutionalized. That is the case even when the policy changes are issued because so much depends on the experi-**

ence and judgment of the inspectors and their supervisors. (2) The change in the actual behavior in the field will depend on the quality of direction and training.

It is important that the field staff understand and accept these changes. The initial reaction of some of the Customs inspectors is that the changes will have a chilling effect on the seizures of narcotics coming into the United States, hence diminishing their enforcement authority.<sup>30</sup> One member of the Review Commission reported: "There appears to be a keen sense of inspectors being under the microscope and somewhat reluctant to refer passengers to secondary searches, and supervisors are fearful of approving searches beyond secondary. The feeling of being second-guessed and overreaction following the current situation is high." The recent statistics belie that conclusion. There were fewer personal searches between June 1998 and July 1999—795 air passengers, down from 3,416 in the previous fiscal year.

*FY 98 vs. FY 99*

**The fact is that Customs conducted 47 percent fewer personal searches on arriving passengers, but the search efficiency improved by 65 percent. In FY 1998 the efficiency was 3.5 percent, and in FY 1999 the efficiency was 5.8 percent.**

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Recommendation 10: The Customs Service needs to put into place a formal and regular monitoring and evaluation process to determine the extent to which the new guidance is accepted and implemented by Customs officers.

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**Category 2 also focuses on the manner in which the Customs Service handles abuses in passenger processing procedures by officials when enforcing the law to protect the national interest, balanced against the need to protect individuals' privacy rights.**

Finding 11: Violations in the present passenger processing procedures

**Violations have occurred in the present passenger processing procedures. The Customs Service's own adverse action/disciplinary reporting system indicates that there have been abuses. However, the abuses/violations do not appear to be widespread. Some people expressed concerns that accusations of abuses and violations of procedures were not properly refuted.**

Recommendation 11: The public affairs/communications arm of the Customs Service, without violating the rights of the employees, and working with the leadership of the Customs Service, needs to plan a strategy and process for the future that refutes unfair accusations about abuses and violations of the Service's procedures. The communications should spell out the functions of the Service and honestly address the abuses that do exist. The Customs Service needs to ensure that abuses and violations by officials are reported to the public, and also that sanctions are imposed in a proper and transparent manner.

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## Finding 12: Discipline

**The issue of discipline of Customs employees who are found to have acted counter to the laws and guidelines was also a subject of this review.**

**A most instructive document in this regard was a February 10, 1999, memorandum to all Customs employees from Commissioner Kelly. He sent the message that (1) the Service must take misconduct seriously; (2) supervisors and employees alike must be subject to the same rules and the same processes; and (3) everyone must be treated fairly and consistently. The Commissioner noted misconduct and resultant discipline for fewer than 3 percent of the workforce in three years (1996 to 1998). The questions remain, however, whether the reporting system noted all misconduct and whether supervisors and managers are taking misconduct as seriously as the Commissioner is.**

**Below are some basic information and statistics on the actions taken by the Service.**

*For the first two quarters of fiscal year 1999, 70 adverse and disciplinary actions were effected. There were 54 suspensions for a variety of reasons, including disruptive and unprofessional conduct and failure to follow proper search procedures.*

*On May 3, 1999, the Discipline Review Board was established. By the end of June, the Discipline Review Board had reviewed 58 cases for the May/June period, of which 30 percent warranted adverse action proposals.*

**The Customs Service had in its new 1999 Table of Offenses and Penalties the following that related to the personal search process:**

- **"Failure to observe established policies or procedures in the apprehension or detention of suspects or violators" (14-day suspension to removal for second/subsequent offenses).**



- **"Use of discourteous, unprofessional, derogatory, or otherwise inappropriate language, gestures, or conduct toward members of the public" (5-day suspension to removal for second/subsequent offenses).**
- **"Use of critical, demeaning, or degrading remarks, comments, observations, statements, or actions which have the purpose or effect of discriminating because of race, color, age, sexual orientation, religion, sex, national origin, or disability" (3-day suspension to removal for second/subsequent offenses).**
- **"Intentional or reckless disregard of the rules governing arrests, searches, seizures" (30-day suspension to removal for first offense).**
- **"Criminal, infamous, or notoriously disgraceful conduct, or other conduct prejudicial to the government" (could lead to removal on first offense).**
- **"The Table of Penalties is a guide, and there may be certain incidents of misconduct that are so serious as to warrant removal on the first offense, despite the published range of penalties. While consistency is clearly the goal, each case is different, and the due process afforded each employee can affect the final outcome in significant ways."**

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Recommendation 12: The Commissioner should direct the senior management throughout the organization to ensure that the new discipline strategy and the new personal search policies are a reality. It should be clear to one reviewing discipline reports that supervisors and managers are taking seriously the importance of disciplining those who violate the personal search procedures. This means that there should be an annual report to the Commissioner on the relationship of citizen complaints, supervisors' reports of violations of the policies, and procedures and disciplinary actions.

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Category 3 issues consider the effectiveness of the new approaches to personal searches as well as additional initiatives that could be considered by the Customs Service.

**Among the specific topics to be covered under category 3 are the new approval processes, training initiatives, passenger information, passenger complaints, and data collection and analysis.**

**This section of the report also considers additional initiatives, procedures, and recommendations for the future. Among the future initiatives under review are technological solutions, lessons from other law enforcement agencies, further review of the extent and composition of training, improved identification of inspectors, and potential contributions to effective personal search procedures by the airlines, the media, and airport authorities.**

### New Processes and Procedures

**In September 1999, the Customs Service completed the basic provisions of a revised Personal Search Handbook, which should be issued as the official handbook early in 2000. The revised handbook reflects significant changes in the personal search policies and procedures that were the basis of the March 1997 handbook. We took particular note of the tone of the handbook, which reflected the plan of the Commissioner to alter the performance, as well as the perception of the performance, of the Service regarding the personal search process. Below are excerpts from Commissioner Kelly's message:**

***The U.S. Customs Service is granted broad authority for very good reasons. Travelers who attempt to smuggle illegal narcotics and other contraband pose a grave risk to our citizens, our communities, and our national economy. It is our mission as the federal government's leading interdiction agency to prevent these harmful items from entering the country.***

***The personal search is an indispensable tool in helping us to achieve our mission. However, it is also an authority that must be used fairly and judiciously. In our determination to protect America from the scourge of illegal drugs, we cannot forget our corresponding duty to safeguard the rights of its citizens.***

***Customs personnel receive extensive training on what factors must be used to select individuals for personal searches. Under no circumstances will we tolerate selection criteria that stray from those officially approved by the agency.***

### Finding 13: The revised Personal Search Handbook

**The table below relates the changes made in the new Personal Search Handbook to the recommendations in this report.<sup>31</sup>**

Changes in Personal Search Procedures Recommendations	Relevant Report
A Customs supervisor must approve all pat down personal searches.	Recommendations: 2, 14
A supervisor must fill out a check sheet for all negative personal searches.	Recommendations: 2, 14
Any person delayed for two hours for a personal search will be given the opportunity to have a Customs officer notify someone of the delay.	Recommendations: 3, 5, 13
A port director must approve all searches that require moving a person to a medical facility for a medical examination. In the event of a prolonged detention (eight hours or longer), where probable cause has not been developed, the port director must reapprove further detention.	Recommendations: 2, 3, 13
Customs officers can consult with Customs counsel at any time. Such consultation is mandatory for all medical examinations.	Recommendations: 3, 5, 14

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When taking a person to a medical facility for a medical examination, Customs officers are required to explain the process and timelines, without jeopardizing law enforcement issues.

Recommendations: 5, 14

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When Customs detains a person for eight hours and probable cause for arrest has not been developed, Customs will notify the U.S. Attorney to secure authorization from a federal magistrate for further detention.

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Recommendations: 3

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Recommendation 13: The Customs Service should take steps to ensure that the revised Personal Search Handbook is in the hands of all supervisors, passenger service representatives, and personnel involved in personal search activities, and that it is the basis of the training activities. The Commissioner should charge his staff to review the recommendations in the Commission's report to determine which recommendations have not been covered by the new policies and procedures and provide a strategy for adopting the recommendations or providing a strong basis for declining to adopt them.

It might be useful for Customs to develop or pull together a "Customs Support Group" or "Friends of Customs" that meet periodically to see how things are going. Members of the group might include representatives from the airlines, Customs officials, private citizens/ eminent persons, Personal Search Review Commission members, and others.

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### Finding 14: The revised approval process

**Although new approval steps designed to ensure greater accountability are in place throughout the organization, it is still important that the inspectors and supervisors be trained in addressing passenger concerns.**

**Effective May 20, 1999, the Field Operations Personal Search Policy was amended to require that all personal searches that include removing a person to a medical facility for a body cavity or X-ray search or detention for a monitored bowel movement require the approval of the port director. The port director is to review the articulable factors and must consult with the associate chief counsel. The approval or disapproval is to be recorded in the appropriate Treasury Enforcement Communications System.**

**This change in procedure appears to be responsive to the need to ensure accountability for decisions to intrude on the privacy of individuals. Furthermore, the necessity to justify one's position requires thought.**

**Effective May 27, 1999, the personal search policy was amended to provide that all pat down personal searches require prior approval of a supervisor unless there is a concern that a weapon may be involved.**

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Recommendation 14: The Customs Service should take steps to ensure that the revised policy is implemented in the field. This means that in addition to the regular monitoring by the supervisors, senior management should establish an annual evaluation to cover, among other issues, the extent to which the approval process change is being implemented.

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## Finding 15: Training

**Training programs are not new to the Customs Service, but it is not clear that diversity/sensitivity training has been a high priority in the past. Recently, the Service has instituted new training packages that cover such topics as cultural interaction and interpersonal communications.<sup>32</sup> Furthermore, the training will now cover the new policies. Most of the training in this area is in-house. The jury is still out on the effectiveness of the new training. It is instructive to note that some of the personnel interviewed said some of the training was too elementary, too “touchy feely,” and/or not sufficient. Others interviewed by the Commission were pleased with the concentration on training and believed that it would make a difference.**

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Recommendation 15: The Customs Service should seek to bring in outside diversity experts to do the training, to ensure that the training represents the “best practices” in diversity training, and to ensure that it is totally independent of the past practices and culture of the Service. Also, there should be two types of evaluation of the effectiveness of the training—internal and external. The evaluations should determine the effectiveness of the training from the point of view of those trained as well as from the point of view of the supervisors and managers. The evaluations of supervisors/managers should determine the extent to which the training led to change in behavior that reflects the changes in personal search policy. From time to time, the Customs Service should have an outside evaluation of its overall training plan and strategy.

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## Finding 16: Informing passengers of the personal search process and of their rights

**As stated earlier, some of the problems the Customs Service has with the public’s perception of the Service are related to the limited amount of information provided to passengers about the personal search process and passenger rights during Customs searches.**

**The Customs Service has taken the initiative in implementing a variety of changes in how it provides information to the public.<sup>33</sup>**

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Recommendation 16: The Customs Service should gather data, using the most effective approaches and considering focus groups and surveys, to determine the effectiveness of the new information strategies. Also, before it invests large amounts of money in a computerized digital informational broadcast system at all airports, the Service should test the prototype to determine if they actually result in a better understanding by passengers of the process and of passenger rights.

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## Finding 17: Collecting, analyzing, and responding to passenger complaints

**The Commission was surprised to find little or no central tracking of citizen complaints until March 15, 1999. Had there been a central data center on passenger complaints about the search process, the Service would have had early warning of citizen dissatisfaction with the personal search processing at one or more of the airports.**

**In March 1999, the Customer Satisfaction Unit was established within the Office of Field Operations to centralize the processing of complaints from the general public, travelers, industry, other government agencies, and Congress. Each port, as well as headquarters, will establish a committee to perform quarterly reviews of all complaints/compliments received within the port to determine whether further action is necessary. This seemed to be a necessary step to understanding passenger complaints and being prepared to address them through individual actions and, where necessary, policy changes.**

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Recommendation 17: Because the collection and analysis of customer complaints are important to monitoring the viability of the personal search policies and the implementation of those policies, the management of the Customs Service, including headquarters management, should review the data monthly, and summary analyses should be made available to the field at least on a quarterly basis.

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## Initiatives that should be considered

### Finding 18: The potential role of airport authorities and airline companies

**The airlines could help the Customs Service if they used their magazines and their video information systems to give more details to passengers about the role and responsibilities of the Customs Service and the personal search processing.**

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Recommendation 18: The airlines need to understand the importance of assisting the Customs Service in carrying out its responsibilities. This means the airlines, possibly working with the Federal Aviation Administration, could be encouraged to show a video covering Customs policies and procedures. The video would be shown before a plane lands to educate passengers about the responsibilities of the Customs Service and what to expect as a passenger entering the United States. The airlines could also be asked to provide more interesting and engaging information about the role of the Customs Service in their magazines.

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## Finding 19: The identification by passengers of Customs officers at the ports of entry

**Whether Customs inspectors should use name badges when on duty has been a long-standing subject of debate. The supervisors already wear name badges. Proponents of name badges on inspectors argue that they will discourage improper behavior on the part of the inspectors. Opponents argue that the safety and security of the inspectors is in jeopardy because name badges will make officials easily identified after hours, and hence subject them and their families to attacks by drug dealers or others that they have arrested for seizures. It is worth noting that officials of other agencies on the line/at the border wear name tags, and those other agencies have not found a need to reverse that policy for safety reasons. Neither side of the argument has been proven.**

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Recommendation 19: We recommend further analysis of the "name badge" issue to determine to what extent the safety of the inspectors would be in jeopardy with name tags and to what extent the benefit of improving the behavior of inspectors outweighs the risks. At the very least, the Customs Service should make more visible the numbers of the badge holders. This could mean larger and darker badge numbers that are easily readable.

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## Finding 20: The future of technological solutions

**The Customs Service has introduced new technological solutions to provide effective service to the public in the least intrusive manner. It is difficult to determine whether these are going to make a difference.<sup>34</sup> Body scanning equipment is one example. Body Scan Imaging Technology has been used at JFK (AS&E BodySearch) and Miami (RAPISCAN Secure 1000) since April 1999. These units will verify whether a passenger is carrying contraband or merchandise under the clothing. Units also have been placed in Atlanta, Chicago, Houston, and Los Angeles.**

**It is important to note that only 13 percent of the passengers given the option of the body scan imaging technology have chosen it over the body search. Many passengers have observed that it takes more time, in part because of the time it takes to fill out the forms before the scanning, and that the delay can hinder passengers in making connecting flights or meeting their waiting parties.**

**Another technological innovation is the digital mobile X-ray, which would eliminate the need to transport passengers to distant medical facilities because the images would be digitized and transmitted to the local hospital for a reading by a medical doctor. The present plan is to have the digital mobile X-ray at major airports in FY 2000.**

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Recommendation 20: The Service should work with the manufacturers of the body scan to make the equipment more passenger-friendly. Also, the Service should work to simplify its paperwork associated with the scanning process or use technology (computers) to assist in this process (the form could be put on a computer with the required questions). Further, the Service should determine whether the experience to date argues for continuing to place the equipment in other airports.

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## Endnotes

- 1** Throughout, this report contains references to the various initiatives that Commissioner Kelly has taken to respond to the complaints about the personal search selection process. A more detailed discussion of the initiatives can be found in the discussion of category 3 issues in section 3.
- 2** The press release, dated April 8, 1999, said that Commissioner Kelly had formed an independent Personal Search Review Commission "to look into U.S. Customs policies for processing travelers at international airports, review procedures for and methods of processing travelers and selecting passengers for further examination at airports through Customs, review adequacy of information made available to the traveling public about U.S. Customs procedures and search authorities, and review search procedures, including personal searches, and the impact of these procedures on air passengers." The release continued: "When the review is concluded, the Commission will advise the Commissioner on how U.S. Customs can effectively perform its informational and search responsibilities when processing passengers."
- 3** This is one definition of profiling used by the Commission: "Racial profiling is a technique whereby a set of characteristics of a particular class or race or ethnic origin of a person is inferred from past experience or stereotypes, and data holdings are then searched for individuals with a close fit to that set of characteristics." The Professional Law Enforcement Seminars define a drug profile as "a compilation of characteristics gained from intelligence sources and the experience of law-enforcement personnel."
- 4** Hubert T. Bell is the Inspector General for the United States Nuclear Regulatory Commission. Robin Renee Sanders was Director for Africa at the National Security Council and currently is a State Department official. Ana Maria Salazar is the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support. Constance Berry Newman is the Under Secretary of the Smithsonian Institution, formerly Director of United States Office of Personnel Management. Sanford Cloud, Jr., is the president and chief executive officer of the National Conference for Community and Justice.
- 5** Appendix A shows the interview guide used by the Commission members. This was, in fact, only a guide to remind the members of the basic lines of inquiry upon which we had agreed. Appendix B shows two matrices that suggested the sources of certain types of information. The table below lists the airports visited by the Commissioners and the percentage of travelers entering through those airports.

Airports Visited	% Travelers
JFK	13.1
Miami	11.1
Los Angeles	10.0
Chicago	5.5
Newark	5.4
San Francisco	4.4
Atlanta	3.5
Houston	3.2
Vancouver	2.8
Dulles	2.5
Boston	2.3
Montreal	1.9
Baltimore	.4
Washington Reagan National	< .2



TOTAL

66.1

- 6 The airports visited were New York JFK, Miami, Los Angeles, Chicago O'Hare, Houston, Atlanta, Washington Dulles, Boston, Baltimore, Newark, San Francisco, Washington Reagan National and Vancouver (pre-clearance) and Montreal (pre-clearance). Among the 14 airports chosen were 9 of the top 15 airports in terms of passengers entering the United States.
- 7 An interview schedule and a table of sources were developed to give the members general guidance on information to be gathered while in the field and at headquarters. This was not a formal survey with statistical sampling of those interviewed, but rather a guide to remind the members of the major topics to be covered. Copies of the interview guide and the table of sources appear in appendices A and B.
- 8 Amanda Buritica's and Janneral Denson's testimonies are included in the *Congressional Record*.
- 9 Class certification has been requested but not granted yet. The class action is in the United States District Court, Northern District of Illinois, Eastern Division. The suit says the common questions of law and fact include (a) have Defendants violated the Fourth and/or Fifth amendments to the U.S. Constitution by targeting African American women for nonroutine pat down searches, and/or body searches.
- 10 The Customs Service responded to the January 1998 letter by replying both to a Senator who inquired about the matter and to the lawyer who posed the questions: "We regret that the [passenger] was dissatisfied with the February 2, 1992, reply he received from our [location removed] Port Director." The Service did address the letter-writer's specific concerns with the following information in a broader response: (a) Because of privacy and officer safety concerns, the names of the Customs officers involved could not be provided, but Customs did provide the badge numbers and the badge number of the supervisory Customs officer. (b) Profiles of travelers are not used in Customs enforcement procedures. (c) "Customs officers are not instructed or trained to verbally abuse and thereby inflict emotional distress on any traveler. On the contrary, our officers are trained and supervised to treat all travelers with courtesy and tact. When we are able to substantiate that one of our employees has failed to maintain Customs' strict professional standards, we take firm corrective action."
- 11 Based on fiscal year 1999 Customs Law Enforcement Activity Report (CLEAR) and Operational Management Report (OMR) data (November 4, 1999) from the U.S. Customs Service.
- 12 Treasury Enforcement Communications System data.
- 13 Act of July 31, 1789, ch. 5, Sec. 23, Sec. 24, 1 Stat. 43. See 19 USC Sec. 507, 1581, 1582.
- 14 The U.S. Supreme Court in *United States v. Ramsey*, 431 U.S. 606 (1977), held that searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, and should, by now, require no extended demonstration. The Court, citing *Carroll v. United States*, 267 U.S. 132 (1925), noted that the Fourth Amendment "does not denounce all searches or seizures, but only such as are unreasonable."
- 15 Summary information on the court cases is in Appendix C.
- 16 The data on searches are based on certain definitions of terms as explained in this endnote. This report does not use the terminology "strip search," but rather the term now used by the Customs Service, "body search."

The level and definitions of searches are as follows: Routine personal searches and seizures: removal of an outer coat or the examination of a handbag are not considered searches of the person. Pat downs: lowest level. By policy, some or mere suspicion is needed to pat down. A pat down includes removal of shoes, lifting of a pants leg or the hem of a skirt, intrusions into pockets, removal of belts, patting of officer's hands over the suspect's clothed body. Pat downs need to be done before an officer proceeds to a nonroutine personal search, except when the officer reasonably suspects that a person might have dangerous articles concealed. The pat down is a search for merchandise and differs from a frisk, which involves a search for weapons. Nonroutine personal searches: Nonroutine personal searches include the body search, X-ray, and body cavity searches. The reasonableness requirement of the Fourth Amendment and Customs policy require reasonable suspicion for all nonroutine personal searches. Reasonable suspicion must be based on objective, articulable facts. For a search to be reasonable, an officer must have reasonable suspicion that merchandise is on the body to conduct a body search; that merchandise is in the body to conduct an X-ray; that the merchandise is in a body cavity to have a body cavity search conducted. These definitions are from the Course for Customs Officers, 1999 edition, page 174. The types of nonroutine personal searches include X-rays under the consent: If, after the completion of a pat down, the officer continues to have reasonable suspicion, the suspect shall be asked to consent to an X-ray. The next type of nonroutine personal search is the body cavity search: By policy, reasonable suspicion must be founded upon a clear indication or plain suggestion of internal conceal-

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ment. That standard is met by specific information that merchandise is concealed within the body, a foreign object protruding, or totality of circumstances. Body cavity searches may be conducted only by authorized medical personnel.

- 17 In August 1999, the Commission was briefed on the changes made as a result of the personal search review, which covered both where the Customs Service has been and where it is going. With regard to where the Service has been, the review found the following:

- No supervisory approval of pat downs required.
- No mechanism for passengers to voice concerns.
- Bad data collection and data input.
- Inconsistencies in implementation of personal search policy.
- No continual personal search training.

With the changes brought about under the leadership of Commissioner Kelly, the following now are a part of the procedures:

- Supervisory approval for all pat downs.
- Port director approval for all medical examinations.
- Customs counsel available to provide assistance.
- Continual review of detentions by port directors.
- Notification of family/friend of Customs delays.
- Supervisory check sheet and comment cards for feedback.
- Improved enhancements in collection and analysis of search data.
- Established a Passenger Data Analysis Unit to review data.

The Customs Service also told the Commission that it is implementing the following:

- Collection and analysis of data required on all secondary inspections.
- Medical examinations to be conducted only after port director has consulted counsel.
- Detainee to be allowed to contact an attorney after eight hours.
- New personal search handbook to be published.
- Personal search training to be conducted.

- Personal search training to be required for any officer conducting personal searches.
- 18 There are 20 Customs Management Centers. Before the changes made by Commissioner Kelly, the responsibilities of the centers included overseeing operations within their area of jurisdiction; exercising the line authority over the ports; providing technical assistance; and overseeing the execution of the core business processes-trade compliance, passenger, and outbound.
- 19 With regard to the accountability systems in the Customs Service, the Commissioner said at the May 20, 1999, hearing before the House Ways and Means subcommittee: "Customs airport personnel work hard to carry out their jobs as best as they possibly can in a difficult environment. The personal search is one of their greatest challenges. In theory, it is a procedure that they undertake as a last resort and with the maximum of supervision. In practice, it is admittedly a procedure that we have found in recent years to have suffered from poor oversight, insufficient training, and a lack of supervision. This may in large part contribute to the allegations of bias that surround Customs use of the personal search."
- 20 The agreement form appears in Appendix D.
- 21 Appendix E provides information on the self-inspection program, including the March 1999 announcement and the August 1999 directive.
- 22 The new timetable on personal searches is as follows:

Two-hour mark: Where an individual has been detained, based upon reasonable suspicion, by the Customs Service for two hours, the individual will be given the option of having Customs notify others of his detention.

Eight-hour mark:

- No later than eight hours after the start of an individual's detention by the Customs Service, Customs will contact the local U.S. Attorney's Office to determine whether, in an Assistant U.S. Attorney's opinion, reasonable suspicion exists for continued detention of the individual.
- If an Assistant U.S. Attorney believes that probable cause has been established, the Attorney will apply for a warrant before a magistrate.
- If the Assistant U.S. Attorney determines that probable cause does not yet exist, but believes that reasonable suspicion exists, he or she will so advise Customs. However, the decision to continue or discontinue the detention in such cases remains the sole responsibility of the Customs Service.
- If the Assistant U.S. Attorney believes that reasonable suspicion does not exist, the Customs Service will release the detained person.
- Contact with the local U.S. Attorney's office may occur before the eight-hour mark as the situation warrants. However, where detention is based upon reasonable suspicion, it is expected that most contacts will occur at the eight-hour mark.

Special procedures for certain circuits: Where judicial circuits, such as the Second and Fifth, require notification of an Assistant U.S. Attorney or review of a magistrate within a given time frame from the start of an individual's detention, the Customs Service and the local U.S.

# **Appendix A**

## **Interview Questions**

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**Personal Services Review Commission  
Interview Questions  
June-July 1999**

**INTERVIEWER**

**LOCATION OF INTERVIEW**

**POSITION/TITLE OF INTERVIEWEE**

**DATE OF INTERVIEW**

**OTHER INFORMATION ABOUT THE INTERVIEW**

**Good Morning, [Afternoon, Evening]**

**I am \_\_\_\_\_, a member of the U.S. Customs Service, Personal Search Review Commission. As a member of the Commission, my goal is to review how the U.S. Customs Service processes passengers and interacts with the public traveling into the United States. We are attempting to determine the accuracy of and justification for the accusations that minority groups and in particular minority women are unfairly targeted for personal searches. We are also seeking to learn from Customs officials some of the challenges they face and the steps they believe Customs has taken to better address the criticisms of the Service. Further, the Personal Search Review Commission is seeking recommendations on the steps to improve the personal search process.**

**In particular, you are being interviewed to help us obtain information to assist in determinations as to whether current Customs Service process and practices are adequate or if changes are required, and if so what changes are warranted.**

**Before you are asked any questions, the following assurances are provided by the Personal Search Review Commission (PSRC).**

- 1. It is the intention of the PSRC to maintain maximum confidentiality for all Customs Service employees and others who are interviewed.**
- 2. The names or other personal identities of Customs Service employees providing responses will not be reported.**
- 3. Your selection for this interview is random and is not based on any personal information regarding your individual job performance or actions.**
- 4. Customs Service employees, like all federal government employees, have an obligation to report criminal offenses. However, it is not the intention of this interview to investigate misconduct, but rather to identify institutional weaknesses so as to improve processes and procedures.**

## Interview Questions

- 1. Does racial and ethnic profiling<sup>1</sup> occur in the U.S. Customs service as a part of passenger processing procedures?**
  - a. How? Where? Based on what authorities?**
- 2. The Customs Service indicates that they do not use profiling, but rather indicators.<sup>2</sup> What is the difference between profiling and indicators?**
  - a. How are the indicators developed? Is the list based on statistically based data? In other words, how did the Customs Service arrive at the list?**
  - b. How often are the indicators reviewed? What is the percentage of hits and misses?**

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<sup>1</sup> According to Roger Clarke: "Profiling is a data surveillance technique that is little understood and ill documented, but is increasingly used. It is a means of generating suspects or prospects from within a large population, and involves inferring a set of characteristics of a particular class of person from past experience, then searching data holdings for individuals with a close fit to that set of characteristics."

<sup>2</sup> The indicators are factors that could lead to a personal search. Examples of more than over 40 factors are: (1) the traveler misinforms the officer about the correct occupation, (2) the traveler claims to be part of a group tour, but actually is traveling alone, (3) the traveler has two passports, one of which reflects considerable travel to narcotics-source countries, (4) the traveler exhibits nervousness or symptoms of drug influence, (5) the traveler refuses to comply with requests to open baggage. While one factor by itself may be an objective, articulable fact, it may be insufficient, whereas a combination of the factors may lead to establishing reasonable suspicion that the person may be carrying contraband or merchandise on his/her person or in his/her body contrary to law.

**3. Are the passenger processing procedures of record effective? Have they changed in recent times? When did the changes take place?**

- a. Is the complaint process effective, or is it flawed if the office receiving the complaint also does the investigation?**
- b. Is the rover screening process effective?**
- c. Are the facilities proper and accommodating to the passengers? Do the passengers have to leave the port for certain types of searches? Is this necessary? What are the options?**
- d. Do the Customs officials adequately answer the questions of passengers? Is the amount of information given limited by a concern that drug smugglers would benefit from the additional information?**
- e. Are the passenger service representatives effective?**
- f. Is there adequate information provided to passengers? In other words, is the information helpful? Or do passengers need more direct information about their rights (such as the overriding right against unreasonable searches and seizures or specifically, for example, the right to refuse to give consent to certain types of examinations)?**
- g. What are the rules with regard to passengers being searched? Are they properly implemented? Specifically, what are the rules and the pattern of implementation with regard to:**

**(1) Making phone calls?**

**(2) Contacting traveling companions?**

**(3) Having a translator?**

**(4) Having a witness to the search? Having a witness who is a family member, someone of the same sex?**

**(5) Other.**

**h. What happens legally and in practice if a passenger refuses to cooperate with Customs officials?**

**i. Why is the practice different from what is required in the legal process?**

**3. What roles do the data management system and the COMPEX compliance measurement process play in ensuring the effectiveness or lack of effectiveness of passenger targeting?**

**4. Are there abuses to present passenger processing procedures? What are they?**

**a. Are they usually at primary or secondary search level?**

**b. Are the abuses primarily when there is a pat down, body search, or x-ray examination?**

**c. Is there concern within the service of recrimination or retaliation if abuses are reported?**

5. **What are the reasons for U.S. Customs Service violations or perception of violations of the law and spirit of the law requiring the protection of rights and the privacy of all?**
  - a. **Is it the culture of the institution? Biases of individuals?**
  - b. **Are there unfair accusations against Customs officials?**
6. **What is effective about the present process?**
7. **Are the steps effective that have been taken within the last three years to address the complaints about the passenger processing?**
  - a. **Is the training, including FLETC (federal law enforcement training center) training, an effective way of addressing the problems?**
    - (1) **Is there effective communication training?**
    - (2) **Is there effective cross-cultural and/or diversity training?**
  - b. **Or are the staffing problems being addressed through the selection process or a combination thereof?**
  - c. **Are the present efforts effective in informing general and secondary search passengers of customs personal searching policies and procedures?**



- d. Are there proper sanctions within the U.S. Customs Service to address the problems or perceptions of problems with passenger processing? Are the grievance procedures effective?**
  - e. Would name badges help reduce the problems? Why can't (won't) officials use badges? Could another type of identifier be used? Specify.**
  - f. Should a magistrate be a part of the process? Where and when in the process should/could a magistrate be used?**
- 8. Are there technological solutions that can alone or in concert with present strategies solve the problems faced by the service?**
- 9. Are there lessons to be learned from other law enforcement agencies, particularly those that have been faced with racial profiling issues?**
- 10. What is the U.S. Customs Services's response to the Booz-Allen Hamilton recommendations dated February 1999 and why?**
- 11. Other information.**



# Appendix B

## Sources of Information During the Review

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Document / Data Requirements	
Press releases <ul style="list-style-type: none"> <li>Announcing the appointment of the Personal Search Review Commission</li> </ul>	Congressional and Public Affairs
Code: 19 USC annotated <ul style="list-style-type: none"> <li>Law as ammended establishing the U.S. Customs Service's authorities and responsibilities with regard to passenger entry</li> <li>Case citations and copies of major cases on personal search and passenger processing. Particular interest in Ninth, Fifth and Second Circuits</li> </ul>	General Counsel
Rules, regulations, handbooks and guidelines covering passenger entry. Specific topics covered: <ul style="list-style-type: none"> <li>Who is searched and why</li> <li>Criteria for determining who is searched</li> <li>Levels of searches</li> <li>How searches should be conducted</li> </ul>	General Counsel and/or Field Operations Policy Office
Law and regulations <ul style="list-style-type: none"> <li>Rights of ppassengers</li> <li>Appeal rights and recourse available to passengers</li> </ul>	General Counsel
Rules, regulations, handbooks and guidelines covering passenger entry. Specific topics covered: <ul style="list-style-type: none"> <li>Who is searched and why</li> <li>Criteria for determining who is searched</li> <li>How searches should be conducted</li> </ul>	Field Operations Policy Office and/or General Counsel

**Report on Personal Searches by the United States Customs Service**

Citizen complaints on passenger processing <ul style="list-style-type: none"> <li>• Complaints general</li> <li>• Complaints on racial/gender profiling</li> <li>• Complaints about identifiers</li> </ul>	<ul style="list-style-type: none"> <li>• Field Operations</li> <li>• Investigations</li> <li>• Internal Affairs</li> <li>• Congressssional Affairs</li> <li>• General Counsel</li> <li>• Ports of entry, including passenger service representatives</li> </ul>
Indicators: The method of establishing	Field Operations
Congressional hearings reports on passenger processing	Congressional Affairs
Indicators: Statistical validity	Field Operations Planning
Staff Opportunity or fear of reporting concern with passenger processing	<ul style="list-style-type: none"> <li>• Union</li> <li>• EEO</li> <li>• Field Operations</li> <li>• Ports of entry</li> </ul>
Training Programs <ul style="list-style-type: none"> <li>• Passenger processing training</li> <li>• Diversity training</li> <li>• Passenger communicaiton training</li> <li>• FLEC</li> </ul>	Field Operations Human Resources
Reports on studies of passenger processing <ul style="list-style-type: none"> <li>• Booz-Allen report</li> <li>• International air passenger processing customer satisfaction report</li> <li>• Internal working group</li> </ul>	<ul style="list-style-type: none"> <li>• Field Operations</li> <li>• Planning</li> <li>• Other</li> </ul>
Public information packages <ul style="list-style-type: none"> <li>• Know before you go</li> <li>• Why me</li> <li>• Other</li> </ul>	<ul style="list-style-type: none"> <li>• Field Operations</li> <li>• Public Affairs</li> <li>• Ports of entry</li> </ul>
Statistics <ul style="list-style-type: none"> <li>• Persons stopped (race, ethnic background, gender)</li> <li>• Persons stopped by country of origin</li> </ul>	<ul style="list-style-type: none"> <li>• Planning</li> <li>• Field Operations</li> </ul>
Data management systems/processes <ul style="list-style-type: none"> <li>• APIS</li> <li>• COMPEX</li> </ul>	<ul style="list-style-type: none"> <li>• Field Operations</li> <li>• Planning</li> </ul>
Process and procedure changes	• Field Operations
Sanctions	Human Resources Field Operations

# Appendix C

## Summaries of Personal Search Cases

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United States Customs Service  
Office of the Chief Counsel  
November 12, 1999

*United States v. Montoya de Hernandez*, 473 U.S. 531 (1986)

Montoya arrived at LAX shortly after midnight following a 10-hour flight from Bogota. She did not speak English and had no family or friends in the United States. She explained that she had come to the United States to purchase goods for her husband's store in Bogota. She possessed \$5,000 in cash, mostly \$50 bills, but had no billfold. She indicated to the inspectors that she had no appointments with merchandise vendors, but planned to ride around Los Angeles in taxicabs visiting retail stores such as J.C. Penney and K-Mart in order to buy goods for her husband's store with the \$5,000.

She admitted that she had no hotel reservations but stated that she planned to stay at a Holiday Inn. She could not recall how her airline ticket was purchased. When the inspectors opened her one small suitcase, they found four changes of "cold weather" clothing. She had no shoes other than the high-heeled pair she was wearing. Although she possessed no checks, waybills, credit cards, or letters of credit, she did produce a Colombian business card and a number of old receipts, waybills, and fabric swatches displayed in a photo album.

The inspectors suspected her of being a "balloon swallower." A female Customs inspector conducted a patdown and strip search. During the search the inspector felt her abdomen area and noticed a firm fullness, as if she were wearing a girdle. The search revealed no contraband, but the inspector noticed that she was wearing two pair of elastic underpants with a paper towel lining the crotch area.

Montoya was told that she was suspected of smuggling drugs in her alimentary canal. She agreed to the inspector's request that she be x-rayed at a hospital, but in answer to the inspector's query stated that she was pregnant. She agreed to a pregnancy test before the x-ray. She withdrew the consent for an x-ray when she

learned that she would be handcuffed en route to the hospital. She was given the option of returning to Colombia on the next available flight, agreeing to an x-ray, or remaining in detention until she produced a monitored bowel movement. She chose the first option and was placed in a Customs office under observation. She was told that if she went to the toilet she would have to use a wastebasket in the women's rest room, in order that female Customs inspectors could inspect her stool for balloons or capsules carrying narcotics. The inspectors refused her request to place a telephone call.

She sat in the Customs office, under observation, for the remainder of the night. During the night Customs officials attempted to place her on a Mexican airline that was flying to Bogota via Mexico City in the morning. The airline refused to transport her because she lacked a Mexican visa necessary to land in Mexico City. She was not permitted to leave, and was informed that she would be detained until she agreed to an x-ray or her bowels moved. She remained detained in the Customs office under observation, for most of the time curled up in a chair leaning to one side. She refused all offers of food and drink, and refused to use the toilet facilities. She exhibited symptoms of discomfort consistent with "heroic efforts to resist the usual calls of nature."

At the shift change at 4:00 p.m. the next afternoon, almost 16 hours after her flight had landed, she still had not defecated or urinated or partaken of food or drink. At that time Customs officials sought a court order authorizing a pregnancy test, an x-ray, and a rectal examination. The magistrate judge granted an order just before midnight that evening, which authorized a rectal examination and involuntary x-ray, provided that the physician in charge considered her claim of pregnancy. She was taken to a hospital and given a pregnancy test, which later turned out to be negative. Before the results of the pregnancy test were known, a physician conducted a rectal examination and removed from respondent's rectum a balloon containing a foreign substance. Montoya was then placed formally under arrest. By 4:10 a.m. she had passed 6 similar balloons; over the next 4 days she passed 88 balloons containing a total of 528 grams of 80% pure cocaine hydrochloride.

**Held:** The detention of a traveler at the border, beyond the scope of a routine Customs search and inspection, is justified at the beginning if Customs officers, considering all the facts surrounding the traveler and her trip, reasonably suspect that the traveler is smuggling contraband in her alimentary canal. Private and public interests must be balanced when law enforcement officers make a limited intrusion on less than probable cause. The reasonable suspicion standard fits well into the situations involving swallowers at the border because this type of smuggling gives no external signs and inspectors will rarely possess probable cause to arrest or search. Governmental interests in stopping smuggling at the border are high. Under this standard, officers at the border must have a "particularized and objective basis for suspecting the particular person" of being a swallower.

The inspectors' suspicion was a commonsense conclusion about human behavior upon which practical people are entitled to rely. They had reasonable suspicion at the beginning of the detention.

The second issue is whether Montoya can be detained incommunicado for almost 16 hours before seeking a warrant. Her detention was long, uncomfortable, and humiliating, but both its length and its discomfort resulted solely from the method by which she chose to smuggle illicit drugs into this country. With reasonable suspicion, the Customs officers were not required by the Fourth Amendment to pass Montoya and her 88 cocaine-filled balloons into the interior. Her detention for the period of time necessary to either verify or dispel the suspicion was reasonable.

Since the initial detention of Montoya with reasonable suspicion was reasonable and her continued detention was reasonable, the evidence is admissible.

*Buritica v. United States*, No. C-95-3354-VRW (N.D. CA 1998)

Plaintiff Amanda Buritica arrived at San Francisco International Airport on a Singapore Airlines flight from Hong Kong on September 22, 1994 (returning from an around-the-world trip). This was considered a high-risk flight because recent drug seizures (at least one internal carrier) had been made from passengers on this flight in the past. Buritica was approached in the Customs area and asked some questions by a Customs inspector. According to the inspector, Buritica was nonresponsive to her questions. So she was brought to secondary and asked further questions by another inspector.

Ultimately Buritica was suspected of being an internal carrier and the inspectors requested approval to conduct a pat-down. There were numerous factors about Buritica which caused this suspicion, including obvious nervousness and discomfort; an inability to correctly answer simple questions regarding her itinerary, where she stayed, and what she did; and a discrepancy regarding her stated plans to leave San Francisco for New York immediately and her tickets, which indicated a planned overnight stay.

With these factors, the inspector obtained supervisory approval for a pat-down search. During the pat-down, the inspector noted that Buritica's stomach was somewhat rigid (possible indication of internal carrying). The inspector brought this information to the attention of a supervisor who subsequently approved a strip search. The strip search revealed a wad of toilet paper (sometimes used by internal carriers) and no signs of diarrhea, of which Buritica repeatedly complained to the inspector. The supervisor considered the results of the strip search, the pat-down, and the factors listed above, plus the fact that Buritica was from Port Chester, a location where a number of internal carriers had been seized in the prior year, and concluded that there was reasonable suspicion that Buritica was an internal carrier and requested her consent for an x-ray. Buritica gave her consent to the x-ray. In fact, Buritica gave her consent in writing four different times (in the search room, at the airport medical site, and at the hospital), and orally gave her consent repeatedly to the doctors treating her.

The first x-ray was taken at the San Francisco International Airport Medical Group (SFIAMG), and according to the physician, the x-ray was inconclusive, but suspicious for foreign bodies. He also stated to the inspectors that "you know, you

could also hold the suspect for a monitored bowel movement or you could also have the x-ray repeated."

The Customs Inspectors agreed with the doctor's advice and transported Buritica to the County hospital (and brought the first x-ray to have it read by a radiologist). The radiologist agreed that the x-ray was suspicious, and Buritica was admitted to the hospital (with an x-ray suspicious for foreign bodies, health and safety become an issue as well as law enforcement, as the death of recent internal carriers that avoided detection confirms) where she signed two additional medical consent forms, and had her first two bowel movements, both of which were negative for contraband.

At the hospital, the medical staff provided Buritica with a laxative (GoLytely). After taking the laxative, Buritica had 22 additional uses of the porta potty during the night, all negative for contraband. At 9:00 a.m. the following morning a second set of x-rays were taken, upon the orders of one of the doctors at the hospital. At 1:10 p.m. (on this second day) the doctor notified Customs that the x-ray showed the intestines were clear. However, the doctor also advised Buritica that she was not yet being released, as she needed to be treated for dehydration. At 1:15 this information was communicated to a supervisory Customs inspector, who then ordered the inspectors out of the hospital room but instructed them to remain in the area to return Buritica to the airport. At approximately 6:00 p.m. on the day after her arrival, Buritica was returned to the terminal, where she left on a flight for New York.

In her judicial complaint and at trial, plaintiff Buritica set forth a number of allegations including, e.g., lack of adequate training on the part of the Customs officials, that the strip search was a full, naked exam (not just of the suspected part of the body), that there was no "reasonable suspicion" because she did in fact have the articles Customs said were missing (panties, toiletries, credit cards and checks), that the consent(s) she gave were coerced, and that Customs officers failed to re-evaluate the propriety of continuing the personal search and detention at various steps along the way.

Held: At the conclusion of the trial, the jury rendered verdicts in favor of Buritica for \$450,000 against the individual Customs employees under Buritica's *Bivens* allegations (under *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), Federal employees may be held personally liable for violating an individual's constitutional rights). Additionally, the presiding judge awarded \$450,000 to Buritica against the United States under Buritica's Federal Tort Claims Act allegations (a plaintiff must elect between *Bivens* and FTCA remedies based upon the same violation of rights, Buritica elected the FTCA remedy against the Government). The judge's opinion made little in the way of specific findings regarding the propriety of the search, but indicated that the search did not become unreasonable until some time after the detention for MBM began. Therefore, it appears that the judge believed the initial search and detention to be based upon reasonable suspicion, but that the extended detention at some undefined point became unreasonable. Prior to the Government's determination of whether or not to appeal the decision, Buritica settled the case.



*United States v. Odofin*, 929 F.2d 56 (2d Cir. 1991)

On June 3, 1989, Odofin arrived at JFK from Nigeria. He appeared nervous, rushed, spoke loudly, and insulted several inspectors. He was carrying a United States passport beginning with the letter "Z" indicating that it was "lost" and replaced overseas. It was issued in Nigeria (a known source country of narcotics). Odofin said he was born in Texas, was a resident of the United States and had been visiting his sick mother in Nigeria for a month, although he could not specify the nature of his mother's illness. He then stated that he had been in Nigeria to set up a consulting business but was unable to offer any specific information about that business. The travel dates marked on the passport were not consistent with his story. He spoke with a marked Nigerian accent. Odofin said he was an accountant for a Wall Street brokerage firm but could neither name the firm nor produce documents verifying his employment. Odofin refused to consent to an x-ray and was taken to the hospital for a monitored bowel movement. During the first several days at the hospital he refused any laxatives. Later he accepted laxatives once a day (the recommended dosage was once every fifteen to twenty minutes).

On June 8, a lawyer for Odofin appeared before a magistrate seeking his release. The magistrate held that it was reasonable to continue his seizure until either an x-ray was obtained or until he had a bowel movement. On June 11, Odofin obtained permission to urinate. Once inside the bathroom Odofin began to defecate while flushing the toilet continuously. When inspectors tried to pull Odofin off the toilet he injured one of them by pushing him into the bathroom door.

A June 23 court order was issued permitting the hospital to x-ray Odofin but he would not hold still for the x-ray. On June 27 another court order authorized the hospital to take whatever steps it deemed necessary to protect Odofin's life. On June 27, Odofin passed four balloons containing 43.9 grams of heroin.

Held: Seizures or detentions for MBMs are reasonable under the Fourth Amendment provided there is reasonable suspicion. Given reasonable suspicion how long may an individual be detained without judicial approval? The court refused to draw any bright line rule, but held that the length of Odofin's detention was governed by his own actions, leaving the inspectors with but two options, continue the detention or turn loose a suspect they reasonably believed to be carrying narcotics. The judge concluded "they had the right to wait him out moment-to-moment, even though Odofin's control made these moments cumulate to days and even weeks."

*Garcia v. United States*, 913 F. Supp. 905 (E.D. PA 1996)

Two passengers, James Garcia and Evaristo Vazquez, arrived at Newark International Airport on February 3, 1994, upon their return from Jamaica. Garcia and Vazquez were separately questioned by inspectors. Garcia could not explain how he was getting home from the airport and he had very little cash on him, he was very nervous, he could not identify Vazquez's occupation, and he gave conflicting responses about his length of stay in Jamaica. Vazquez also was nervous and could not explain how he was getting home from the airport, he exhibited high blood pres-

sure, appeared bulky, was unemployed, and paid cash for a ticket which was purchased by someone else. Garcia and Vazquez were both suspected of being internal carriers. They both consented to be x-rayed and were taken to the hospital and x-rayed. Garcia's x-ray was negative, but after several x-rays, the doctors believed Vazquez had a foreign body in his stomach. Garcia was released, but Vazquez was detained for a monitored bowel movement. After two clear bowel movements Vazquez was again x-rayed. This x-ray was negative and Vazquez was released. At the time they filed their complaint, Garcia and Vazquez held a press conference claiming, among other things, that they had been singled out and discriminated against because of their age and ethnicity.

**Held:** The judge adopted the Customs inspectors' version of events and found that the searches were based upon reasonable suspicion. The judge ruled "although we cannot reduce [reasonable suspicion] to a neat set of legal rules, we find that under the totality of the foregoing articulated and particularized factual circumstances a sufficient reasonable suspicion existed that plaintiffs were smuggling narcotics internally. Accordingly the conduct of the customs officers was within constitutional and common law bounds." The judge also concluded that "in order to perform their crucial function of protecting our nation's borders, customs officers can not be subjected to 'unrealistic second-guessing' by the courts." The judge did, however, express discomfort regarding two aspects of the case: the practice of shackling the passenger for transportation to the hospital; and the practice of having MBM passengers search their own stool.

*United States v. Lamela*, 942 F.2d 100 (1st Cir. 1991)

Jose Lamela arrived in San Juan from Colombia. Jose was asked by a Customs officer to produce an airline ticket. He made a contradictory remark as to the purpose of his trip. The Customs officer noticed that Jose appeared nervous, was wearing baggy clothing, and that his midsection appeared to be bulky. He was removed to a private area and a patdown of his midsection disclosed a bulky object. He was told to remove his trousers, revealing a girdle containing several packets of cocaine.

**Held:** The strip search was based on reasonable suspicion.

*United States v. Yakubu*, 936 F. 2d 936 (7th Cir. 1991)

Yakubu arrived in Chicago from Nigeria. The Customs officer noticed that Yakubu had taken two other recent trips to Nigeria and had purchased his one-way ticket with cash from a travel agency often used by Nigerian heroin smugglers. Bowel movement and digestion suppressants were found in Yakubu's luggage. Yakubu objected to the patdown of his person, which revealed a rigid stomach. He became nervous when asked about contraband and refused to consent to an x-ray. When asked if he had eaten any "ebba" lately, Yakubu gave several answers before admitting he had. "Ebba" is used to practice a swallowing technique. He said his wife was waiting for him in the terminal, though no one was found, and he provided two false phone numbers in an effort to contact her. Yakubu was detained so that his bowel movements could be monitored. He passed 82 balloons containing heroin.

**Held:** The facts established reasonable suspicion that Yakubu was smuggling contraband in his alimentary canal.

*United States v. Oyekan*, 786 F.2d 832 (8th Cir. 1986)

Two Nigerian women arrived at St. Louis International Airport from Nigeria via London with a small amount of luggage. Oyekan stated that the purpose of her trip was to buy cosmetics and that she intended to stay about a week. Keleni gave a similar account of her plans. Both carried only cash, \$900.00 and \$800.00, respectively. They both claimed to be traveling separately but had consecutively numbered tickets and planned to stay at the same hotel, the name of which was identically misspelled on their travel documents. They paid for their tickets in cash and had no friends or relatives in the United States. Subsequently, a patdown and a strip search revealed nothing but the inspectors remained suspicious.

**Held:** These articulable facts which were particularized as to these women are sufficient to reasonably suspect that they were alimentary canal smugglers, thus justifying an involuntary x-ray examination.

*United States v. Handy*, 788 F.2d 1419 (9th Cir. 1986)

Handy was returning from Thailand, a known source country for narcotics. She was exceedingly nervous and trembling. In her purse were found a lubricant, dental floss, and an anti-laxative. It was known that these materials were commonly used by individuals transporting controlled substances in body cavities.

When asked about the lubricant, dental floss and anti-laxative, she gave a fanciful story that she did not know how those items got into her purse, that she had dropped her purse, and when she picked it up, those items were in it. Her posture and gait were not normal. She shuffled as she walked and was not able to move freely. Her nose was running, she was sniffing, and she had difficulty finding her passport in her purse. She had trouble finishing her sentences and in making sense out of what she was saying. All of these indicated that she may have been at the time under the influence of some kind of narcotic. A patdown search was conducted disclosing a bulge. During the strip the bulge was determined to be a washcloth in her panties. She stated that her period had started. Her use of a washcloth was suspicious, however, because tampons had been found in her purse.

The resulting body cavity search conducted at the local medical facility revealed rubber receptacles containing heroin.

**Held:** The objective, articulable facts upon which the Customs officers relied here are such that they would have led an experienced and prudent Customs officer to reasonably suspect Handy was concealing contraband in her body cavity.

*United States v. Shreve*, 697 F.2d 873 (9th Cir. 1983)

Shreve arrived in Los Angeles from Lima, Peru, and Customs inspectors noticed that he was walking in an unnaturally erect and stiff manner, suggestive of body cavity smuggling. Shreve was an unemployed carpenter, and had paid cash for his airline ticket. He traveled alone on a newly issued passport; his stay in Peru, a known cocaine source country, had been short and he knew no one there; and experienced officers noted he was unusually talkative, overly friendly, and nervous.

Based on these observations, inspectors conducted a patdown search. During the inspection, the inspectors noticed Shreve's nervousness and that he continued to move in a constrained fashion suggestive of body cavity smuggling. Shreve's pupils were dilated and his speech slurred.

An examination of Shreve's luggage revealed restaurant and hotel receipts that suggested he had consumed only beverages during the last three days in Peru, a practice characteristic of body cavity smuggling. The search also uncovered a bottle of oil that could be used to lubricate objects inserted into the rectum.

An x-ray search revealed foreign objects inside his body, which were later determined to be filled with cocaine.

**Held:** In this case, the facts noted by the Customs inspectors provide ample support for their determination that there was clear indication of body cavity smuggling. The x-ray search was reasonable in the Ninth Circuit.

*Velez v. United States*, 693 F. Supp. 51 (S.D.N.Y. 1988)

On September 28, Velez arrived at JFK from Colombia. Inspectors developed objective, articulable facts that Velez was smuggling drugs in his alimentary canal. He refused to consent to an x-ray.

At 8:30 p.m. he was taken to the hospital for an involuntary x-ray under the border search exception. The initial x-ray was interpreted tentatively as positive, but this was only a tentative reading. A radiologist was needed to give a definitive interpretation. Velez was detained and placed in a hospital room.

A radiologist came on duty at the hospital at 8:00 a.m. the next morning, September 29. The x-ray should have been given to the radiologist at that time. Due to the neglect of both the hospital and the Customs Service, it was not. Velez had a bowel movement at 2:00 p.m. on September 29. A radiologist interpreted the initial x-ray on September 30 as negative. No narcotics were passed. A second x-ray was taken on September 29, which was negative. Velez was detained in the hospital for almost another two days.

**Held:** The initial x-ray of Velez was reasonable but Velez is entitled to damages of \$25,000 against the Customs Service under the Federal Tort Claims Act for false imprisonment for the two-day period from the morning of September 29 to the morning of October 1.


# **Appendix D**

## **The Performance Agreement Form**

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DEPARTMENT OF THE TREASURY  
UNITED STATES CUSTOMS SERVICE

**PART 1 — EMPLOYEE INFORMATION**

PART 1 — EMPLOYEE INFORMATION		
1. NAME OF EMPLOYEE	2. RATING PERIOD COVERED 	From
3. POSITION TITLE/SERIES/GRADE		To
4. ORGANIZATION (Office, Division, Etc.)		
5. DUTY STATION		
6. REASON FOR RATING		
<input type="checkbox"/> Annual Rating of Record <input type="checkbox"/> Other (Specify) →		

## **PART 2 — CRITICAL PERFORMANCE AREAS**

**Area #1: Program/Mission Objectives—**

**Program Area-Expectations Are Met By:**

[illegible]

(If needed, attach additional sheets)

**PRIVACY ACT NOTICE:** The information collected on this form, pursuant to Chapter 43, Title 5, U.S. Code, may be used to make determinations regarding employee job advancement, salary increases, awards, training, and retention in the job and grade. Information and comments obtained from the employee which are included on this form will not be disclosed outside the U.S. Customs Service without prior consent, except as required by OPM Regulations or permitted by law. The comments provided by the employee may be considered in conjunction with use of the form, which may include discussion and counseling regarding the employee's job performance. Copies of the form may be maintained by the servicing personnel office, the supervisor and the employee.

**Area #2: Managerial and Supervisory Competencies**

**A. Competency Expectations are Met by:**

**(1) Business Practices Which Incorporate (Mark only those that apply):**

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> technical competence           | <input type="checkbox"/> strategic problem solving      | <input type="checkbox"/> financial management |
| <input type="checkbox"/> planning & evaluation          | <input type="checkbox"/> process improvement techniques | <input type="checkbox"/> management controls  |
| <input type="checkbox"/> program measurement & analysis | <input type="checkbox"/> technology management          | <input type="checkbox"/> service orientation  |

**(2) Leadership/Management Practices Which Promote (Mark only those that apply):**

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> human resources management | <input type="checkbox"/> communication & feedback     | <input type="checkbox"/> team building/teamwork       |
| <input checked="" type="checkbox"/> EEO/diversity   | <input type="checkbox"/> conflict management          | <input type="checkbox"/> innovation/creative thinking |
| <input type="checkbox"/> employee development       | <input type="checkbox"/> partnerships & collaboration | <input type="checkbox"/> safety                       |

**(3) Values:**

Accept and conduct responsibilities in accordance with formally issued Customs values, ethics and integrity guidelines.

**B. Performance Agreement Certification:**

This is to verify that we have met, discussed and understand expectations for the established performance appraisal period.

\_\_\_\_\_  
Rating Official's Signature and Date

\_\_\_\_\_  
Employee's Signature and Date

**PART 3 — MID-YEAR REVIEW**

Signatures indicate that a mid-year discussion has taken place. (Comments, attach as needed)

\_\_\_\_\_  
Rating Official's Signature and Date

\_\_\_\_\_  
Employee's Signature and Date

**ANNUAL PROFICIENCY RATING:**

### Area #1: Program/Mission Objectives

7

7

## Area #2: Managerial and Supervisory Competencies

7

□

- ## OVERALL SUMMARY RATING

Rating Official's Signature and Date

Employee's Signature and Date

Reviewer's Signature and Date  
(Only necessary if employee performance is Unacceptable)

**Comments:**



## GENERAL INSTRUCTIONS

■ Coverage — the Performance Agreement will be used by all employees in supervisory and managerial positions.

■ Critical area #1 is comprised of one or more program/mission objectives which are defined by the employee and the supervisor. Each objective statement (a minimum of one objective is required) should be succinct, and should include only those activities in which the employee will be directly involved. The statement(s) should be similar to the objective(s) in the supervisor's performance agreement and be specific to the employee's local work unit goals for the performance cycle.

■ Critical area #2 is comprised of 3 generic competencies considered relevant to all supervisory and managerial positions within the Customs Service—Business Practices, Leadership/Management Practices, and Values. Locally developed competency areas are NOT to be added to the core competencies for purposes of employee performance evaluations.

### ■ Definitions of Managerial and Supervisory Competencies:

#### (1) Business Practices (a minimum of one is required):

Technical competence—	Demonstrates technical proficiency and an understanding of its impact in areas of responsibility.
Planning and evaluation—	Establishes policies, guidelines, plans and priorities; identifies required resources; plans and coordinates with others; monitors progress and evaluates outcomes.
Program measurement & analysis—	Improves organizational efficiency and effectiveness through the identification of performance measures and analysis of results.
Strategic problem solving—	Recognizes and defines problems; analyzes relevant information; encourages alternative solutions and plans to solve problems.
Process improvement techniques—	Continuously seeks to improve work processes and applies appropriate analytic techniques.
Technology management—	Encourages staff to stay informed about new technology; applies new technologies to organizational needs; ensures staff is trained and capable.
Financial management—	Prepares and justifies budget; monitors expenses; manages procurement and contracting.
Management controls—	Ensures the integrity of the organization's processes; promotes ethical and effective practices.
Service orientation—	Actively seeks user input; ensures needs are met; continuously seeks to improve the quality of services and products.

#### (2) Leadership/Management Practices (a minimum of one is required):

Human resources management—	Ensures effective recruitment, selection, training, performance appraisal, recognition, and corrective/disciplinary action; promotes good labor relations and employee well-being.
EEO/diversity—	Recognizes the value of cultural, ethnic, gender, and other individual differences; provides employment and development opportunities for a diverse workforce (mandatory competency).
Employee development—	Encourages employees to assess their strengths and weaknesses and to participate in their own self-development.
Communication & feedback—	Effectively communicates orally and in writing; provides and seeks feedback from others.
Conflict management—	Anticipates & seeks to resolve confrontations, disagreements, and complaints in a constructive manner.
Partnerships & collaboration—	Networks with, and provides information to, key groups and individuals; appropriately uses negotiation, persuasion, and authority in dealing with others to achieve goals.
Team building/teamwork—	Fosters cooperation, communication, and consensus among groups.
Innovation/creative thinking—	Develops insights and solutions; fosters innovation among others.
Safety—	Provides a safe working environment.

■ The generic competencies and program/mission objectives are intended to serve as the framework for joint discussions between the rater and ratee at the 3 types of meetings throughout the year, which are as follows: 1) Performance planning meeting; 2) Ongoing review meetings; and 3) Annual Proficiency Review Meeting. The performance planning session should result in a common understanding of the expectations for individual performance.

■ Throughout the performance cycle, the rater and ratee should meet frequently to conduct "ongoing reviews," to discuss the ratee's performance to date. At a minimum, at least one ongoing review will be conducted within the sixth or seventh month of the performance cycle.

■ Employees who change positions, on a permanent basis, should repeat the performance planning meeting to establish new objectives and determine which competencies apply. Employees on extended details may also modify their plans, as appropriate.

■ At the end of the review year, the rater and ratee will meet to discuss the ratee's performance and achievements throughout the year. The Annual Proficiency Rating is determined by the rater as part of the final review. The attached optional worksheet may be utilized by the ratee in preparation for this joint discussion. See the attached worksheet for further instructions.

■ Deficiencies in performance should be recognized and their causes determined as soon as they become evident. An Employee Proficiency Plan (EPP) should be issued where deficiencies continue. An Unacceptable proficiency rating may not be given to the ratee prior to the ratee having completed the EPP, which at a minimum must be 60 days.

■ No supplemental or departure ratings are required. An employee is presumed successful unless an EPP exists.

■ Evaluation for Newly Appointed Managers and Supervisors: An employee serving a probationary period as a newly appointed manager or supervisor must be reviewed twice during the probationary period on the applicable Management and Supervisory Competencies: by the end of the 6th month and by the end of the 11th month after entering the position. If the 6th month or 11th month review leads to a negative recommendation (regarding retention in the supervisory position), the supervisor should contact a Labor & Employee Relations Specialist for guidance. (Customs Form 270 is now obsolete.)

**PURPOSE:**

**WHEN TO USE:**

**HOW TO USE:**

**SUPERVISORY RESPONSIBILITIES:**

## WORKSHEET

**1. My Areas of Strengths and Accomplishments:**

[illegible]

## This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins or other markings on the paper.

PURPOSE:

**In what way(s) can existing work process be improved:**

(If needed, attach additional pages)

Submitted By

Date \_\_\_\_\_

(PLEASE DETACH and SUBMIT TO YOUR SUPERVISOR)



# **Appendix E**

## **Self-Inspection Program Information**

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## THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

March 22, 1999

### MEMORANDUM FOR ALL MANAGERS AND SUPERVISORS

FROM: Commissioner *ORK*

SUBJECT: Self-Inspection Program

During the last 3 months, the staff of the Management Inspections Division (MID), Assistant Commissioners, designated Program Coordinators for each major office, and several field experts have designed the Customs Management Self-Inspection Program. I am pleased to announce that the formulation of the Self-Inspection Program is complete and will be fully implemented during the month of March.

Self-inspection plans have been developed by each Assistant Commissioner that include an inventory of mandatory and discretionary core areas with corresponding worksheets. The Self-Inspection Worksheets (SIW's) for operational and universal core areas were designed by Customs program managers and field experts to contain the most important activities that managers should be examining. The universal worksheets represent activities that are common to all managers who have delegated responsibilities in administrative and operational areas.

The redesign of the management inspection program is one of the many steps I have directed to improve management accountability and foster integrity from within the Service. I think it is extremely important, as a basic management responsibility, for managers at all levels to examine their operations periodically, to certify the accuracy of the examination, and to implement corrective actions.

In anticipation of the start date, the MID staff and Program Coordinators have begun to brief and train managers on the Self-Inspection Program. Self-Inspection Plans and SIW's will be distributed to Headquarters and field offices by March 22, 1999. The first self-inspection period is March 29 to May 15, 1999. The first self-inspection will cover the period from October 1, 1998, to March 31, 1999. The Assistant Commissioners' reports are due to MID by June 30, 1999. Feedback and evaluation of the first full self-inspection will follow. MID will begin their inspections in July with the anticipation of reaching every organization to verify and validate self-inspections once every 2 years.

I want to emphasize that this is your program. I prefer you identify your own issues and corrective actions. You do not want others to do this for you. A positive and honest approach to this process begins with your decision to give it your best effort. I am expecting you to meet the challenge as we learn together from the experiences of self-inspections.



DATE: August 23, 1999

ORIGINATING OFFICE: IA:MID  
SUPERSEDES: 1520-001, 4/10/89  
REVIEW DATE: August 2001

## Self-Inspection Program (SIP) Document

1. PURPOSE/OBJECTIVES. To establish a self-inspection program to verify that the Customs mission is performed in the most effective and efficient way. The self-inspection system incorporates performance measures under development, process improvement activities and routine supervision.
2. POLICY. The self-inspection program is the platform for managers and supervisors of the organization, from the top to the bottom, to evaluate their success in managing, assessing and reporting on the state of their operations. This will build accountability throughout all levels of the organization and foster integrity from within. The focus of self-inspections for managers and the Management Inspections Division (MID) will be areas susceptible to financial vulnerability and corruption, mission performance, resource utilization and internal and external relations.
3. AUTHORITIES/ REFERENCES. Federal Managers' Financial Integrity Act (FMFIA) and Office of Management and Budget (OMB) Circular A-123.
4. DEFINITIONS.
  - 4.1 A unit is defined as a work group that has its own distinct organizational code and/or responsibility or delegated authority for any core area designated within the self-inspection program.
5. SCOPE. Every unit manager within the Customs Service will perform a self-inspection at least semi-annually that will include operational and mission support areas.
6. RESPONSIBILITIES.
  - 6.1 The Director, Management Inspections Division (the independent inspection organization for Customs), Office of Internal Affairs, is responsible for the overall management of the Self-Inspection Program.
  - 6.2 Assistant Commissioners and major staff officers (Office of the Commissioner) are responsible for developing and maintaining Headquarters and field inspection plans and Self-Inspection Worksheets in accordance with established criteria contained in Section 7.2.
  - 6.3 Assistant Commissioners for Offices of Investigations and Field Operations shall maintain a support staff for the Self-Inspection Program.

6.4 Assistant Commissioners will designate Program Coordinators to the permanent Self-Inspection Program Work Group.

6.5 Directors, Field Operations, and Special Agent in Charge (SAIC) offices and other field offices will conduct self-inspections and report and certify to the Assistant Commissioners the results of their own and their subordinate organizations within their purview.

6.6 Port Directors and Resident Agents in Charge (RAIC) will perform self-inspections and report and certify results of self-inspections.

6.7 First-line supervisors are responsible for conducting and reporting self-inspections at least semi-annually.

## 7. METHODOLOGY.

7.1 Self-Inspection Structure: Plans and Core Area Self-Inspection Worksheet (SIW) (See 7.3)

7.1.1 Each Assistant Commissioner will designate a Program Coordinator for Self-Inspections as a member of the Self-Inspection Work Group that is chaired by the Director, Management Inspections Division. The Work Group will meet periodically to further develop the program through evaluation of self-inspection activities and operational changes. The Work Group will meet as often as necessary at the discretion of the chairperson. Each Assistant Commissioner will develop and maintain a Self-Inspection Plan consisting of universal (mandatory) and operational (mandatory and discretionary) core areas for Headquarters and field components. Each plan will meet the program criteria as follows:

7.2.1 Covers all major responsibilities and delegated authorities

7.2.2 Involves all managers up and down the chain of command

7.2.3 Contains universal (mandatory), and operational (mandatory and discretionary) core areas

7.2.4 Contains certification and corrective action procedures

7.2.5 Provides semi-annual reporting

7.3 A Self-Inspection Worksheet (SIW) has been developed for each core area. The Core Area Self-Inspection Worksheet is a list of questions that address the most significant control points (procedures of a core area). The questions will be answered to describe the conditions as they exist at the time of the inspection ("as is").



7.4 The management official of the organizational element responsible for the core area will assign a certification level. This certification will be based on the definitions in Section 9. The worksheet will be reviewed for concurrence and approval up the respective organization's chain of command to the Assistant Commissioner level.

8. FREQUENCY OF SELF-INSPECTIONS. Self-inspections will be conducted at least semi-annually. The self-inspection scope will consist of activities for the six-months preceding the inspection. Core areas can be inspected anytime during the cycle. After the first year, inspection periods will cover January to June and July to December. Reports will be due in August and February.

8.1

#### SIP REVIEW CYCLE

1 <sup>st</sup>	10/1 - 3/31	Due in MID - 6/30
2 <sup>nd</sup>	4/1 - 12/31	Due in MID - 2/15
3 <sup>rd</sup>	1/1 - 6/30	Due in MID - 8/15
4 <sup>th</sup>	7/1 - 12/31	Due in MID - 2/15

The initial review cycle was six months; the second is nine months in order to change the reporting cycle to the calendar year. This nine-month period is necessary to perform evaluations, revisions, and inspections based on the initial review data. All subsequent cycles will be six months from the previous cycle. (3<sup>rd</sup>/4<sup>th</sup> = Regular Cycle)

9. CERTIFICATION. The intent of certification by the responsible officer is to give a candid and honest evaluation of each core area that discloses and describes the level of compliance to the next level of management. Two possible certification levels are described below.

<u>Acceptable</u>	Everything is in compliance or an acceptable management practice and no corrective action is necessary.
<u>Needs Improvement</u>	One or more activities is not in compliance or not an acceptable management practice and requires corrective action.

10. RESPONSIBLE CERTIFICATION LEVELS. Self-inspections will be conducted at all levels of the chain of command and be proprietary at all levels. The owner (proprietary) or interested party should conduct the self-inspection. Self-inspections should be completed at the lowest supervisory/managerial level. Managers are encouraged to conduct the self-inspection themselves where practical; however, the

actual work of the self-inspection may be delegated to a subordinate. If delegated, the manager and/or supervisor must discuss the contents of the inspection with the employee doing the inspecting prior to the certification. Each management official will certify results to the next level of the organization for reporting purposes.

#### 11. REPORTING OF SELF-INSPECTION RESULTS.

11.1 Results of self-inspections, including worksheets, identification of documents and transactions sampled, and other reviewer notes, will be maintained on file until the review and validation by the Management Inspections Division is completed. Management Inspections Division inspections, unit self-inspection worksheets, and associated documents/reports should be maintained for four inspection cycles (2 years). Two complete Management Inspections Division inspection results/reports should always be on file.

11.2 INTERIM REPORTING REQUIREMENTS. There will be a manual reporting system to capture data until the automated system is operational. Each level of management will report through the chain of command that self-inspections were done, during the scheduled self-inspection period, are accurate, have been analyzed and corrective actions taken with timelines. Narrative descriptions of core areas rated "Needs Improvement" along with a corrective action plan (addendum) will be forwarded to the next level of management. Reporting requirements were issued in a memorandum under separate cover.

11.3 Each Assistant Commissioner will be required at the end of each self-inspection cycle to provide the Director, Management Inspections Division with a written report to certify that the self-inspections were done, were accurate, were analyzed and corrective actions taken with timelines.

11.4 The Director, Management Inspections Division will provide the Commissioner and Assistant Commissioners with a consolidated report reflecting the results of the self-inspections, issues identified, trends, and actions taken by each Assistant Commissioner, and the results of the inspections conducted by the Management Inspections Division. The Management Inspections Division will also provide information on findings or trends related particularly to universal core areas to the appropriate Assistant Commissioner via the Self-Inspection Work Group. The reporting typically follows this flow:

11.4.1 Appropriate First Line Supervisors/Managers (responsible party) - Prepare worksheets and certifies

11.4.2 Reviewers (next level of supervision) or Supervisor Reporting Officers - Certify

11.4.3 Port Directors/ASAICs - Certify

11.4.4 Directors, FO/SAICs - Certify

11.4.5 Assistant Commissioners - Certify semi-annually to the Management Inspections Division that self-inspections were complete, accurate, analyzed and appropriate corrective actions were completed or are in process.

11.4.6 Management Inspections Division - Confirms results, informs Commissioner.

11.4.7 Commissioner - Reviews and discusses results with Assistant Commissioners and Management Inspections Division.

12. AUTOMATED SYSTEM REPORTING (IN PROGRESS). At least semi-annual reports through an automated system will be required. The system will be accessible across all management levels of Customs organizations and candor will be an important ingredient. Reporting will be required at all levels where self-inspections are completed.

12.1 The deadlines for completion of the self-inspection reporting through the Assistant Commissioners will be August and February of each year except as noted in 8.1 above.

13. RELATIONSHIP TO MANAGEMENT CONTROL REVIEWS AND FMFIA. Self-inspections are to be the means by which reviews of management controls are conducted in Customs. Self-inspection worksheets have replaced all Headquarters and field directed management control review checklists. Therefore, the Self-Inspection Program has become the official Customs management control review program in response to requirements of the Federal Managers' Financial Integrity Act (FMFIA) and Office of Management and Budget (OMB) Circular A-123.

13.1 Results of self-inspections which indicate control weaknesses will be addressed in the same manner as would similar management control review results, i.e., the appropriate management level would take or begin to take necessary action to correct the identified control weakness. Verification that the corrective action was completed and such action corrected the identified weakness will be accomplished by the validations conducted by the Management Inspections Division.

13.2 After confirmation of the reviews' results, the Management Inspections Division will provide a report to the Assistant Commissioner (Office of Finance) outlining the nature and potential impact of any major control weaknesses identified via the self-inspection process. This information will be used, along with other information received from Assistant Commissioners and Process Owners, for the purpose of identifying potential material weaknesses which might be included in the Commissioner's Annual Assurance Statement on management controls (required by the FMFIA). The Commissioner's Annual FMFIA Assurance Statement will continue to

be prepared by the Office of Finance and included in the Customs Annual Accountability Report.

14. INDEPENDENT VERIFICATION & VALIDATION BY THE MANAGEMENT INSPECTIONS DIVISION. The Management Inspections Division will evaluate self-inspection plans, and validate the self-inspection certifications. Validations will provide a vehicle for feedback on process improvement to all levels of management. The Management Inspections Division will report inspection results that are positive, negative, and those areas deemed as best practices.

14.1 Mandatory core area worksheets will be reviewed annually with the organizational units to incorporate new strategies and mission objectives. As suggested by research or executive management direction, core area worksheets will be created or deleted as required.

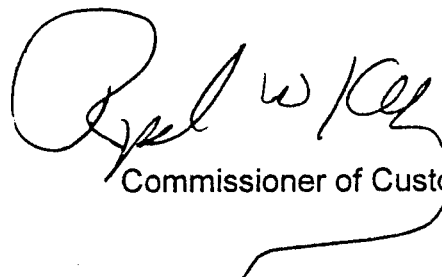
14.2 Part of each major organization will be inspected by MID at least every 2 years, e.g., Field Operations (CMC), SAIC, Aviation Branch, and Headquarters Office. The Management Inspections Division will conduct follow-up inspections as necessary.

14.3 The validation may consist of one or more of the following at the discretion of the Management Inspection team leader:

- Official notification requesting self-inspection results
- Automated System Research and Analysis
- Internal/External Interviews
- Management Surveys
- On-site Testing

14.4 A report describing MID's inspection results will be posted to the Self-Inspection Reporting System and differences in certifications and deficiencies will be reported through the chain of command.

15. TRAINING. The Management Inspections Division will provide self-inspection training to all managers and supervisors and/or provide a training guide to all key managers as needed or requested. Also, the Management Inspections Division will conduct training at the Federal Law Enforcement Training Center for all new Customs supervisors.

  
Commissioner of Customs

## Core Area Self-Inspection Worksheet

**Core Area:** Airport Personal Search Policy      **Office Inspected:** \_\_\_\_\_

**Rating:** Mandatory      **Level of Reviewer:** Chief Inspector/Process Owner

Activity Evaluation	Yes	No*	N/A	HQ: Guidance	Field: Remarks
1. Have all inspectional personnel signed acknowledgement of receipt for the personal search handbook and attended the training? (CIS Handbook 3300-04, Sept. 1999)					
2. Were any personal searches conducted by non-trained personnel? (CIS, HB3300-04)				Was training available?	
3. Were any personal searches conducted by non-Customs personnel? (INS, APHIS)				Was training available?	
4. Were all personal searches, except immediate patdowns for weapons, approved by a supervisor? (CIS, HB 3300-04)					
5. Was a Supervisory Checklist completed for each personal search? (CIS, HB 3300-04)					
6. Was an appropriate TECS record created for each personal search? (CIS, HB 3300-04)					
7. Did the automated search report narratives provide clear explanation of the suspicious factors, times of notifications, and the circumstances of the search? (CIS, HB 3300-04)					
8. Was a TECS IOIL query conducted on all passengers who were subject to a personal search? (CIS, HB 3300-04)					

**\* If no, complete the addendum.**

**Core Area Self-Certification  
(Check one):**

☐ **Superior**

☐ **Acceptable**

☐ **Needs Improvement**

**I have conducted a self-inspection of this Core Area, and this worksheet accurately represents the results of my inspection.**

**Reporting Officer Certification:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**I have reviewed this worksheet and concur that the rating accurately reflects the results of this self-inspection.**

**Supervisor Reporting Officer Certification:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# Appendix F

## Passenger Rights Statement

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### Passenger Rights During Customs Border Searches

- **Passengers entering the United States are protected against unreasonable search and seizure by the Fourth Amendment. Due to the government's interest in protecting national security and in preventing the importation of illegal contraband (including narcotics and controlled substances, and undeclared merchandise on which duty is owed), and due to the Supreme Court's determination that passengers entering into the country have a decreased expectation of privacy, the following is considered reasonable:**
  - **Searches may be conducted without a warrant or probable cause;**
  - **A passenger's luggage (including purses, backpacks, etc.) and outer garments (including coat, jacket, shoes, etc.) may be searched without any degree of suspicion;**
  - **A patdown search may be conducted based upon nothing more than entry into the United States;**
  - **A more intrusive search must be based upon "reasonable suspicion" (reasonable suspicion must be based upon articulable facts, and must be focused on the portion of the body or clothing to be searched);**
  - **If Customs officers have reasonable suspicion to believe a passenger has contraband concealed within his/her body, the passenger may be transported to a medical facility for a search by medical personnel;**
  - **Customs officers cannot detain someone indefinitely. Some courts have required Customs officers to notify the U.S. Attorney and seek a judicial determination within 24 hours that reasonable suspicion exists for continued detention of the person (some courts require notification after 48 hours, and some have no pre-set time limit).**

- **Under the Fifth Amendment, passengers are entitled to equal protection under the laws and it is a violation of their rights to be searched on any discriminatory basis (e.g., race, gender, or national origin). Consideration of citizenship or a travel itinerary that includes a narcotics source or transit country is not discriminatory.**
- **Passengers are entitled to the Miranda warning and all rights discussed in such warning, including the right to counsel, but only upon an arrest or during a "custodial interrogation." For Customs, such interrogations are those in which the search is more intrusive than a patdown and the questioning goes beyond that for routine Customs examination.**



# Appendix G

## Signage Information at Top 15 Airports

Signage in Place at the Top 15 Airports				
Airport	Did You Know?	What You Need To Do	Your Comments Are Important	Welcome to the U.S. Banners
JFK	19	19	22	6
Miami	10	10	4	0
LAX	21	21	13	6
Chicago O'Hare	20	27	3	4
Newark	14	14	8	2
San Francisco	20	0	10	2
Honolulu	20	20	5	6
Houston	10	5	4	2
Atlanta Hartsfield	8	12	2	0
Dallas/Ft. Worth	10	10	6	3
Washington/Dulles	2	2	2	2
Boston	14	12	4	2
Detroit Metro	14	14	4	7
Orlando	14	14	4	2
Jose Munoz/PR	6	6	2	1
Total	202	186	93	45

Customs has three new signs at our international airports. Below is a brief description of each.

- ***Did You Know?***—This sign provides information about Customs, which the general traveling public may not be aware of, such as the challenges Customs faces regarding the varying methods narcotics smugglers use.
- ***What You Need To Do***—This is an instructional sign which located above the baggage carousel provides necessary information to ensure smooth processing through Customs.
- ***Your Comments Are Important***—This sign begins stating, “We are the guardians of our nations borders” and proceeds to explain why Customs exists. Located at the base of these signs are Customs comment cards.

The signs say:

THE U.S. CUSTOMS SERVICE

# Did You Know?



- ★ The U.S. Customs Service has responsibility to prevent smuggling of narcotics, undeclared money and other contraband.
- ★ Every year, Customs seizes tons of cocaine and heroin from air passengers—some swallow narcotics or conceal them in their bodies.
- ★ Most travelers are honest. However, there are some who choose to break the law.
- ★ Customs is committed to treating all persons with dignity.
- ★ Customs officers have authority to question you and to examine you and your personal property.
- ★ An examination may include a search of your personal belongings and your person.
- ★ To help us, please be cooperative. If you have questions, please ask.
- ★ If a Customs officer treats you in a disrespectful manner, ask to speak to a supervisor.
- ★ If you have any suggestions on how we can improve, please let us know. You will find comment cards as you leave.
- ★ If you think we have done a good job, we'd like to know that too.

*Thank You and  
Welcome to the United States.*

THE U.S. CUSTOMS SERVICE

# What You Need To Do



★ While waiting for your luggage, review your Customs Declaration to make certain it is completed fully.



★ Keep your Customs Declaration and your passport ready and go to the nearest exit.



★ If you are approached by a Customs Officer, please cooperate fully. This will speed your processing so you can continue on your way.



THE U.S. CUSTOMS SERVICE

## Your Comments Are Important



### **Our Mission:**

*We are the guardians of our nation's borders—America's frontline. We serve and protect the American public with integrity, innovation and pride. We enforce the laws of the United States, safeguard the revenue, and foster lawful international trade and travel.*

**We welcome your comments and suggestions. The comment cards located below are for your convenience.**





# **Appendix H**

## **Passenger Service Representative Program**

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3310-002A



DATE: June 2, 1999

FO:P  
3310-002, 3/21/95  
June 2001

## COMMERCIAL AIR PASSENGER SERVICE REPRESENTATIVE PROGRAM

1. **PURPOSE.** This directive revises policy, responsibility, and procedures for the Passenger Service Representative (PSR) Program to ensure the U.S. Customs Service provides the highest quality customer service possible to commercial air travelers.
2. **POLICY.**
  - 2.1 While all Customs employees involved in passenger processing shall provide customer service in a professional and courteous manner, the PSR is the main on site point of contact for the traveling public to: (a) enhance the Customs image through informed compliance, (b) promote the importance of the Customs mission, and (c) encourage customer satisfaction through personal contact and open dialogue.
  - 2.2 The goal of the PSR Program is to provide 100 percent PSR coverage during peak passenger processing workload periods, seven days a week.
  - 2.3 The PSR position(s) will be staffed by a GS-1890-12 Supervisory Customs Inspector(s) selected from supervisory ranks. The assignment will normally be for two years.
  - 2.4 All PSRs will be provided with dress attire which provides high visibility, enhances the Customs image, and promotes a uniform appearance.
3. **AUTHORITY/REFERENCE.** Executive Order 12862, September 11, 1993, setting customer service standards.
4. **RESPONSIBILITIES.**
  - 4.1 The Assistant Commissioner, Office of Field Operations, has policy oversight for the PSR Program.
  - 4.2 The Directors, Field Operations shall ensure the PSR Program is implemented. Further, the Directors will work with Port Directors to develop staffing alternatives to reach the goal of providing 100 percent PSR coverage during peak passenger processing workload periods, seven days a week.
  - 4.3 Port Directors shall implement the PSR Program in accordance with this policy.



**4.4 The PSRs will be the main, on site, point of contact for the traveling public. The PSRs will, through personal contact, interact with inbound passengers (including official protocol requests), and answer Customs questions. The PSR is the point of contact to ensure the processing of passenger complaints and compliments. The PSR will conduct complaint analysis and inquiry, as appropriate, and provide feedback regarding specific complaints or customer service issues.**

**4.5 The first line supervisors have the responsibility to be in the Customs inspection area and to resolve passenger processing issues. This responsibility includes addressing passenger complaints. The PSR does not relieve the first line supervisor or other Customs officers of their responsibilities.**

## **5. PROCEDURES.**

**5.1 The PSRs will maintain high visibility and access in the Customs passenger processing area between the control point and the exit. PSRs will ensure the "Customs Service Standards" and their photograph and telephone number are prominently displayed throughout the Customs area.**

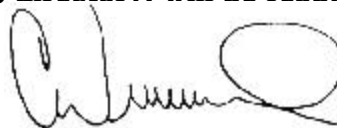
**5.2 In locations where PSRs are established, the Data Accountability Tracking System (DATS) will be used as the local system of record keeping for PSR activities. Currently DATS includes: (a) number of complaints, (b) number of meetings, (c) outreach, (d) official protocol, and (e) surveys conducted. The PSR is responsible for recording the number of complaints from inbound passengers and official protocol encounters. The Ports are responsible for assuring all other areas of DATS are collected and recorded.**

**5.3 The PSRs shall participate in overtime in accordance with port policy. PSR overtime will be provided, as required, and upon the approval of the Port Director.**

## **6. MEASUREMENTS.**

**6.1 The goal of the PSR Program is to provide 100 percent coverage during the peak traffic times. The Port Director is responsible for measuring the amount of time the PSR is available in the Customs passenger processing area.**

**6.2 All Passenger telephone complaints, where a telephone number is provided or is available through a telephone directory, will be responded to in one day.**



**Assistant Commissioner  
Office of Field Operations**



# Appendix I

## Six Bases for Searches

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### Bases for Search

There are six primary categories Customs officers use to determine whether to conduct a personal search.

#### 1. Behavioral Analysis

Behavioral analysis is the recognition of physiological signs of nervousness. Examples include shaking or trembling hands, rapid breathing for no apparent reason, cold sweats, pulsating carotid arteries, flushed face, and avoiding eye contact.

#### 2. Observational Techniques

Observational techniques involve recognizing physical discrepancies in appearance. Examples include clothing that disguises body contours, unexplained bulges in clothing, thick-soled shoes, and unnatural gait.

#### 3. Inconsistencies

Inconsistencies are conflicts identified in the interview and/or documentation. Examples include catching the person in a false statement, unreasonable explanation for travel, and unexplained irregularities in ticketing or reservations.

#### 4. Intelligence

Intelligence is information developed by another officer which may include the Passenger Analytical Unit, TECS, and Drug Enforcement Administration.

#### 5. K-9

K-9 searches are those conducted in response to an alert by a Customs Positive or Passive Response Canine.

#### 6. Incident to a Seizure or Arrest

Incidental searches are those conducted in continuation of a seizure action of previously discovered illegal or hidden merchandise. For example, finding contraband in a false-sided suitcase would provide a basis for conducting a patdown search to determine if additional merchandise is hidden on the person.

Source: Personal Search Handbook.



# **Appendix J**

## **Body Scan Information**

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# U.S. Customs Service Body Scan Imaging System

## WEEKLY REPORT

**Reporting Period From November 5, 1999 to November 11, 1999 (Inclusive)**

	Scans Offered			Scans Accepted			Number of Seizures From Scans	Number of Seizures From Patdowns (Scan Declined)
	Total	Male	Female	Total	Male	Female		
JFK (IAT)	7	6	1	0	0	0	0	0
MIA	2	2	0	0	0	0	0	1
LAX	5	2	3	3	2	1	0	0
ATL	0	0	0	0	0	0	0	0
ORD	*	*	*	*	*	*	*	*
IAH	*	*	*	*	*	*	*	*
JFK (AA)	*	*	*	*	*	*	*	*
Total	14	10	4	3	2	1	0	1

**Number of Declination for:**      **Safety (S): 2**      **Lack of Understanding (U):**

**Language Barrier (L):**      **Time (T): 8**      **Pregnancy (P): 1**

**Other (O):**      **Explain:**

**TECS Seizure Report Numbers (from scans only):**

**System Outages:**      **Reason:**      **Total Downtime in Hours:**

## RUNNING BALANCE

Location	Scans Offered	Scans Accepted	Positive Scans	Seizures in Body (Scan Declined)	Seizures on Body (Scan Declined)
JFK (IAT)	475	26	0	16	7
MIA	319	65	10	8	17
LAX	29	13	0	0	1
ATL	0	0	0	0	0
ORD	*	*	*	*	*
IAH	*	*	*	*	*
JFK (AA)	*	*	*	*	*
Total	823	104	10	24	25

\* Chicago (ORD) delivered 11-04-99; training held during this week's reporting period. Houston (IAH) to be delivered on 11-13-99. Atlanta (ATL) not using system due to inadequate screening. JFK (AA) system available as of 11-12-99.

## U.S. Customs Service Body Scan Imaging System

### WEEKLY REPORT

**Reporting Period From November 12, 1999 to November 18, 1999 (Inclusive)**

	Scans Offered			Scans Accepted			Number of Seizures From Scans	Number of Seizures From Patdowns (Scan Declined)
	Total	Male	Female	Total	Male	Female		
JFK (IAT)	6	5	1	0	0	0	0	0
MIA	5	4	1	3	3	0	0	1
LAX	6	4	2	2	0	2	0	0
ATL	0	0	0	0	0	0	0	0
ORD	2	2	0	0	0	0	0	0
IAH	*	*	*	*	*	*	*	*
JFK (AA)	1	0	1	0	0	0	0	0
Total	20	15	5	5	3	2	0	1

**Number of Declination for:**      **Safety (S): 1**      **Lack of Understanding (U):**  
**Language Barrier (L): 2**      **Time (T): 8**      **Pregnancy (P): 1**  
**Other (O): 4**      **Explain: 2 would not provide reason;**  
                                  **1 preferred patdown; 1 incidental to seizure**

**TECS Seizure Report Numbers (from scans only):**

**System Outages: Chicago**      **Reason: Bad switch**      **Total Downtime in Hours: 12**

### RUNNING BALANCE

Location	Scans Offered	Scans Accepted	Positive Scans	Seizures in Body (Scan Declined)	Seizures on Body (Scan Declined)
JFK (IAT)	481	26	0	16	7
MIA	324	68	10	8	18
LAX	35	15	0	0	0
ATL	0	0	0	0	0
ORD	2	2	0	0	0
IAH	*	*	*	*	*
JFK (AA)	1	0	0	0	0
Total	843	111	10	24	25

**\* Houston (IAH) delivered on 11-13-99. Training not conducted yet. Atlanta (ATL) not using system due to inadequate screening.**

# U.S. Customs Service Body Scan Imaging System

## WEEKLY REPORT

**Reporting Period From November 19, 1999 to November 25, 1999 (Inclusive)**

	Scans Offered			Scans Accepted			Number of Seizures From Scans	Number of Seizures From Patdowns (Scan Declined)
	Total	Male	Female	Total	Male	Female		
JFK (IAT)	4	4	0	0	0	0	0	0
MIA	3	1	2	1	1	0	0	0
LAX	5	4	1	1	1	0	0	0
ATL	0	0	0	0	0	0	0	0
ORD	1	0	1	0	0	0	0	0
IAH	*	*	*	*	*	*	*	*
JFK (AA)	0	0	0	0	0	0	0	0
Total	13	9	4	2	2	0	0	0

**Number of Declination for:**      **Safety (S):**      **Lack of Understanding (U):**  
**Language Barrier (L): 2**      **Time (T): 10**      **Pregnancy (P):**  
**Other (O): 1**      **Explain: Pax declined to provide reason**

**TECS Seizure Report Numbers (from scans only):**

**System Outages:**      **Reason:**      **Total Downtime in Hours:**

## RUNNING BALANCE

Location	Scans Offered	Scans Accepted	Positive Scans	Seizures in Body (Scan Declined)	Seizures on Body (Scan Declined)
JFK (IAT)	485	26	0	16	7
MIA	327	69	10	8	18
LAX	40	16	0	0	0
ATL	0	0	0	0	0
ORD	3	2	0	0	0
IAH	*	*	*	*	*
JFK (AA)	1	0	0	0	0
Total	856	113	10	24	25

**\* Houston (IAH) delivered on 11-13-99. Training not conducted yet. Atlanta (ATL) not using system due to inadequate screening; anticipate screening in 2 weeks.**



## U.S. Customs Service Body Scan Imaging System

### WEEKLY REPORT

**Reporting Period From November 26, 1999 to December 1, 1999 (Inclusive)**

	Scans Offered			Scans Accepted			Number of Seizures From Scans	Number of Seizures From Patdowns (Scan Declined)
	Total	Male	Female	Total	Male	Female		
JFK (IAT)	5	4	1	0	0	0	0	0
MIA	3	1	2	0	0	0	0	0
LAX	6	6	0	2	2	0	0	0
ATL	0	0	0	0	0	0	0	0
ORD	1	1	0	0	0	0	0	0
IAH	1	1	0	1	1	0	0	0
JFK (AA)	2	2	0	0	0	0	0	0
Total	18	15	3	3	3	0	0	0

**Number of Declination for:**      **Safety (S): 2**      **Lack of Understanding (U):**

**Language Barrier (L): 1**      **Time (T): 11**      **Pregnancy (P): 1**

**Other (O):**      **Explain:**

**TECS Seizure Report Numbers (from scans only):**

**System Outages:**      **Reason:**      **Total Downtime in Hours:**

### RUNNING BALANCE

Location	Scans Offered	Scans Accepted	Positive Scans	Seizures in Body (Scan Declined)	Seizures on Body (Scan Declined)
JFK (IAT)	490	26	0	16	7
MIA	330	69	10	8	18
LAX	46	18	0	0	0
ATL	0	0	0	0	0
ORD	4	2	0	0	0
IAH	1	1	0	0	0
JFK (AA)	3	0	0	0	0
Total	874	116	10	24	25

**\* Atlanta (ATL) not using system due to inadequate screening; anticipate screening in 1 week.**



# **Appendix K**

## **Table of Offenses and Penalties**

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## THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

August 23, 1999

### MEMORANDUM FOR ALL CUSTOMS SUPERVISORS AND MANAGERS

FROM: Commissioner   
SUBJECT: Revised Table of Offenses and Penalties

Integral to our initiatives to improve the processes for investigating and addressing misconduct, is our recently completed revision of the Customs Table of Offenses and Penalties. Since the last major revision was over 10 years ago, it was clearly time to bring the Table up to date, so that it could serve as a complement to the other discipline reforms we have implemented.

Although the new Table (which is attached and effective immediately) contains excellent information to explain its usage, a few of the most important principles of the revised Table should be highlighted:

--The Table is, first and foremost, a guide for supervisors and managers to assist them in assessing misconduct and determining the appropriate penalty to propose. It provides the foundation for consistent and appropriate disciplinary action, so that we can better achieve our goal of "like discipline for like infractions."

--The Table is, nevertheless, only a guide. It provides the framework for consistency; but, since no two cases are exactly the same, the Table should not be seen as a substitute for the critical judgment that a manager brings to the process of determining the appropriate penalty.

--The new Table has been brought up to date. Many types of misconduct were not listed in the previous Table and have been included in the revision.

--The revised Table provides clearer guidance. Explanatory notes with discussion have been added, and references have been included when appropriate.

--The Table now provides more flexibility for use. The second and third offense columns have been consolidated into one column for second and subsequent offenses to provide flexibility in applying the concept of progressive discipline, based on the manager's considered judgment of the facts of individual cases.

As indicated above, the revised Table of Offenses and Penalties is only one of the changes we have made to the internal investigation and discipline programs.

These initiatives--which include the Disciplinary Review Board, improved methods for reporting misconduct, a cadre of trained factfinders to conduct administrative inquiries, enhancements to the Internal Affairs organization and resources, and new delegations of authority -- taken together, provide the Customs Service with the tools to ensure fairness and consistency.

New policies and procedures will not be successful, however, without communication and understanding. Our challenge is to continue improving employee awareness about the reforms. To meet this challenge, we will soon be distributing a comprehensive handbook to all employees: *Preserving Our Pride – a Guide to Good Conduct and the Discipline Process*. The handbook will provide clear information about the discipline process, a "plain English" guide to conduct and ethics, and a copy of the Table of Offenses and Penalties, along with the delegations of authority for taking disciplinary action.

This handbook should be helpful in communicating the changes we have made to the discipline process, as well as the standards of conduct we expect all employees to meet as Customs employees. As supervisors and managers, you play a special role in the implementation of change. Not only are you responsible for dealing with employee performance and conduct issues, but you are also the key to ensuring that employees understand what's expected of them. You also must do your part to ensure fairness and consistency. As a manager who has served at every level of supervision and management, I know how difficult it is to be a supervisor. But I also know that nothing in an organization can happen without the support and understanding of supervisors.

To further assist you in this essential role, we are currently developing a supervisor's version of the *Preserving Our Pride* handbook. It is my sincere hope that this handbook will answer many of your questions on our new discipline process and other closely related topics. In addition, Customs has labor/employee relations specialists throughout the field and in Headquarters, who are there to provide advice and guidance to you as you carry out your critical responsibilities in the discipline process. Please feel free to call upon them.

Attachment

## U. S. CUSTOMS SERVICE TABLE OF OFFENSES AND PENALTIES

### *Instructions on Use*

This Table of Offenses and Penalties serves as a *guide* to managers, supervisors and practitioners in assessing the appropriate penalties for common types of misconduct. While the Table does not cover every possible offense, it does provide examples of many categories of misconduct, whether committed on or off-duty, for which employees may be disciplined. The absence of a specific regulation covering an act does not mean that such an act is condoned, permissible, or would not result in disciplinary or adverse action. The Table is provided as a *guide*, not as a set of mandatory rules; it does not relieve supervisors and managers of the responsibility of using good judgment when applying it to disciplinary situations.

PURPOSE AND PROGRESSIVE NATURE OF DISCIPLINE: Disciplinary penalties are imposed to correct the behavior and teach the employee and others that those actions are inappropriate for an employee of the U. S. Customs Service. Discipline also serves to demonstrate the expected high standards of conduct for the Service. Discipline is usually progressive in nature and therefore, subsequent misconduct is treated with increasing severity. For example, an employee would not be fired for the first instance of being absent-without-leave for 15 minutes. Instead, the supervisor might start with counseling or an oral admonishment, then issue a Letter of Reprimand and so on, until either the employee corrects the behavior or until the discipline progresses up to removal from the Service.

While the concept of progressive discipline is appropriate for most types of infractions, some (such as accepting a bribe) are so egregious that a single instance is sufficient to warrant removal.

NOTE: A very minor, insignificant infraction may only warrant counseling or oral admonishment to correct the behavior.

### SELECTING A PENALTY

**Proposal:** Supervisors and managers, after determining that some discipline is appropriate, are then faced with proposing a suitable penalty for the offense(s). Many factors are considered in determining the penalty to propose but of particular importance are the "aggravating factors" of each case. Those include issues such as whether or not the employee is a supervisor or whether or not the employee has been disciplined in the past. The proposal notice should identify those aggravating factors so that the employee has a full and fair opportunity to respond to everything that was considered in determining the proposed penalty. Some of these factors may

be identical to the “Douglas Factors” discussed below under “Final Decision.” In some cases, these aggravating factors will warrant selecting a penalty at the upper range or even outside the range of penalties shown. For example, supervisors and managers, because of their responsibility to demonstrate exemplary behavior, may be subject to a greater penalty than is provided in the range.

In taking disciplinary actions, due regard shall be given to the principle that similar penalties should be imposed for similar offenses. At the same time, the penalty may also be elevated beyond that shown for a first offense when an employee engages in additional misconduct even though it is not identical or even similar to the past misconduct. For example, an employee has a past offense of absence without leave and is currently facing a charge of insubordination. When using the Table, the reader should look under the “Subsequent Offense” column and select within that range as appropriate to the circumstances of the case.

Finally, the penalty may also be below the listed range for the offense but only after full and fair consideration of all available information. Supervisors and managers should never lose sight of the fact that the Table is a useful guide but that it cannot replace reason or good judgment.

**NOTE:** This Table uses 2 columns to cover the range of penalties from Written Reprimand to Removal under the headings of first and second/subsequent offenses. Second/subsequent offenses means the second and additional incidents of misconduct (which were previously shown under separate heading of second and third offenses). The use of this multiple heading does not imply that all employees will be removed from the Service after committing a second offense. Nor is the purpose to abandon the principle of progressive discipline when considering the penalty for a second or subsequent offense. The Table is a guide to help ensure consistent application of similar penalties for similar offenses but the selection of a penalty should always be appropriate to the facts of the case.

**Final Decision:** Once the deciding official determines whether or not the employee committed the misconduct as charged, the official must select the specific penalty to impose. At that point, the deciding official must consider certain factors, which are well established and commonly known as the “Douglas Factors.” Not all of these factors are pertinent in every case. Some factors will weigh in the employee’s favor and these are called the mitigating factors in the case. Some factors will not be in the employee’s favor and are called aggravating factors. Selection of an appropriate penalty must thus involve a responsible balancing of the relevant factors in each case. The “Douglas Factors” are:

1. The nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, was frequently repeated;

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with the Table of Offenses and Penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in questions;
10. Potential for the employee's rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee by the employee or others.

Since Letters of Reprimand do not require a proposal, that Letter is "final" in nature and therefore, consideration of the "Douglas Factors" is appropriate.



OFFENSES: The Table is arranged by alphabetical categories of offenses. Within each category, the offenses are listed in order of seriousness, beginning with the least serious.

EXPLANATORY NOTES: The purpose of the Explanatory Notes column is to clarify what is covered by the offense through the use of further information, examples, or cross-references to other offenses.

OFF-DUTY MISCONDUCT: In cases where discipline is proposed for reasons of “off-duty” misconduct, the proposal notice will include an explanation of the nexus (connection) between the misconduct and the efficiency of the service.

REFERENCES: Legal citations in the Reference column are provided strictly for the convenience of the user. A listing does not mean that the citation is the only one applicable; nor is a citation required to determine a violation. Key citations are provided for the laws most frequently referenced. Although a criminal statute may be cited, the level of proof required for disciplinary purposes does not rise to that level required for criminal prosecution. Examples are provided for explanatory purposes only and are not intended to be all-inclusive as the citation or reference may change in the future.

ADVICE AND GUIDANCE: The Labor/Employee Relations Specialist (L/ER) is a knowledgeable resource and serves in an advisory capacity to supervisors and managers. Supervisors and managers are encouraged to contact their servicing L/ER Specialist at the onset of the disciplinary process.

# U.S. CUSTOMER SERVICE TABLE OF OFFENSES & PENALTIES

	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
<b>A</b> 1	<b>Attendance-Related</b> Absence without leave (AWOL) or unauthorized absence of 8 hours or less	Includes tardiness	Written reprimand	1-day suspension to removal	
2	Absence without leave (AWOL) or unauthorized absence between 1 and 5 workdays		Written reprimand to 3-day suspension	3-day suspension to removal	
3	Absence without leave (AWOL) or unauthorized absence of more than 5 workdays		14-day suspension to removal	Removal	
4	Any unauthorized absence resulting in the substantial impairment of mission accomplishment		1-day to 5-day suspension	5-day suspension to removal	
5	Failure to follow established leave procedures	Does not include those under leave restrictions. See E-1	Written reprimand	1-day suspension to removal	
<b>B</b> 1	<b>Discriminatory Behavior</b> Use of critical, demeaning, or degrading remarks, comments, observations, statements, or actions which have the purpose or effect of discriminating because of race, color, age, sexual orientation, religion, sex, national origin, or disability	<u>On or off-duty</u>	Written reprimand to 3-day suspension	3-day suspension to removal	
2	Careless and negligent discrimination because of race, color, age, sexual orientation, religion, sex, national origin, or disability or retaliation for prior EEO involvement in any aspect of employment	<u>On or off-duty</u>	Written reprimand to 3-day suspension	3-day suspension to removal	
3	Deliberate or willful discrimination because of race, color, age, sexual orientation, religion, sex, national origin, or disability in any aspect of employment	<u>On or off-duty</u> e.g., in employment, appraisal, advancement or treatment of employees (present and former) and applicants	14-day suspension to removal	Removal	

Please note that there must always be a nexus (connection) between the misconduct (on or off-duty) and the efficiency of the service.

# U.S. CUSTOMER SERVICE TABLE OF OFFENSES & PENALTIES

	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
<b>B</b> 4	<b><u>Discriminatory Behavior-con't</u></b> Sexual harassment including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature	<u>On or off-duty</u>	5-day suspension to removal	14-day suspension to removal	
5	Inappropriate and/or unwelcome verbal or physical behavior of a sexual nature, including teasing, jokes, gestures, display of visual material, or remarks which has the purpose or effect of creating a hostile work environment	<u>On or off-duty</u>	Written reprimand to 14-day suspension	14-day suspension to removal	
6	Official action taken, threatened or inferred as a result of rejection or submission to requests for sexual favors	<u>On or off-duty</u> Includes behavior or actions directed to an employee and non-employees (such as customers, contractors, vendors, or passengers), both favorable or unfavorable, based on granting or withholding a sexual favor	30-day suspension to removal	Removal	
<b>C</b> 1	<b><u>Disruptive Behavior</u></b> Use of abusive, slanderous, malicious, derogatory, goading or otherwise inappropriate language, gestures, or conduct to or about another person or which creates any disturbance or disruption		Written reprimand to 3-day suspension	3-day suspension to removal	
2	Use of discourteous, unprofessional, derogatory, or otherwise inappropriate language, gestures, or conduct toward members of the public		Written reprimand to 5-day suspension	5-day suspension to removal	
3	Fighting, threatening, attempting to inflict or inflicting bodily harm to another; any violent act or language, gestures, or conduct toward members of the public		5-day suspension to removal	14-day suspension to removal	

Please note that there must always be a nexus (connection) between the misconduct (on or off-duty) and the efficiency of the service.

# U.S. CUSTOMER SERVICE

## TABLE OF OFFENSES & PENALTIES

	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
<u>D</u> 1	<u>Drugs and Alcohol</u> Drinking alcoholic beverages while on duty or while carrying a weapon	Except while engaged in an authorized undercover operation which necessitates the consumption of alcohol	Written reprimand to 14-day suspension	14-day suspension to removal	31 CFR 0.204 Firearms and Use of Force Handbook
2	Interfering with or refusing or failing to submit to a properly ordered or authorized drug test	Includes substituting, adulterating, or otherwise tampering with a urine sample	14-day suspension to removal	Removal	DDFWP Handbook CIS HB 51200-01
3	Reporting for duty under the influence of alcoholic beverages or being on duty or subject to overtime and so impaired as to be unable to properly perform assigned duties or to be a hazard to self or others	For example, an employee drinks after notice from supervisor of LEAP for non-duty hours and the employee is incapacitated for duty.	14-day suspension to removal	Removal	
4	Operating a Government owned or Government leased, or privately owned vehicle on official business while under the influence of illegal drugs or alcohol	On or off-duty Includes vehicles, vessels, aircraft, or other equipment	30-day suspension to removal	Removal	
5	Possession, use, sale or distribution of illegal drugs or unauthorized substance	On or off-duty Whether on Government premises or non-work premises	Removal		21 USC 844
<u>E</u> 1	<u>Failure/Refusal to Follow Orders</u> Failure to follow proper supervisory instructions	For example, failing to follow leave restrictions	Written reprimand to 14-day suspension	14-day suspension to removal	
2	Willful and intentional refusal to obey an authorized order of a superior	Includes insubordination and failing to implement corrective measures on findings of discrimination, and failure to report for required training or for duty as detailed, transferred, or reassigned	5-day suspension to removal	14-day suspension to removal	

➡ Please note that there must always be a nexus (connection) between the misconduct (on or off-duty) and the efficiency of the service.

# U.S. CUSTOMER SERVICE

## TABLE OF OFFENSES & PENALTIES

	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
<b>E</b> 1	<b>Falsification</b> Inadvertent, careless, or deliberate misstatements or misrepresentations in completing official documents	Includes statements or documents related to employment, promotion, travel, transaction with the public or any other record	Written reprimand to removal	14-day suspension to removal	
2	Material and intentional falsification	For employees with potential to testify in court, violation of this standard may jeopardize their ability to perform duties required by their positions. Includes perjury or other false testimony and any employee knowingly making a false statement or accusation	Removal		18 USC 1001 LaChance v. Erickson 96-1395 Brogan v. US 96-1579
<b>G</b> 1	<b>Inappropriate Use of Weapons</b> Failure to report the discharge of a firearm or use of a weapon as required by the Firearms Policy.	<i>For all items in section G: "weapon" refers to, but is not limited to, authorized firearms, batons and chemical spray</i>	Written reprimand to 5-day suspension	5-day suspension to removal	
2	Inappropriate storage, care or misplacement of a weapon or ammunition	Loss or damage	Written reprimand to 14-day suspension	14-day suspension to removal	
3	Inappropriate display of a weapon		5-day to 10-day suspension	10-day suspension to removal	
4	Unauthorized or illegal possession of a weapon		14-day suspension to removal	Removal	

☛ Please note that there must always be a nexus (connection) between the misconduct (on or off-duty) and the efficiency of the service.

# U.S. CUSTOMS SERVICE TABLE OF OFFENSES & PENALTIES

	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
<b>G</b> 5	<b>Inappropriate Use of Weapons-con't</b> Unnecessary discharge of a weapon (a) Where there is apparent danger to human life: (1) Intentional (2) Unintentional  (b) Where there is no apparent danger to human life: (1) Intentional (2) Unintentional		(1) Removal (2) 14-day suspension to removal  (1) 14-day suspension to removal (2) Written reprimand to 2-day suspension	(2) Removal  (1) Removal (2) 2-day suspension to removal	Firearms and Use of Force Handbook
<b>H</b> 1	<b>Inquiries or Investigations</b> Refusal, interfering, or failing to cooperate during an official investigation or inquiry	Includes a refusal to answer work related questions, attempting to influence others involved in an inquiry or releasing information in an Internal Affairs matter when advised not to do so. Also includes delays or refusal to complete background re-investigation forms.	14- day suspension to removal	Removal	18 USC 1621 18 USC 1622
<b>I</b> 1	<b>Misuse of Position</b> Use of Customs Service identification including badges and credentials, to coerce, intimidate, deceive, or for personal gain	On or off- duty	Written reprimand to 10-day suspension	10-day suspension to removal	18 USC 701 CD 099 5230-029
2	Interference with an employee's right or reprisal against an employee for exercising a right to file or participate in a grievance or appeal or for labor union affiliation or lack thereof	On or off-duty	Written reprimand to 14-day suspension	14- day suspension to removal	

Please note that there must always be a nexus (connection) between the misconduct (on or off-duty) and the efficiency of the service.

# U.S. CUSTOMER SERVICE

## TABLE OF OFFENSES & PENALTIES

	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
1 3	<b>Misuse of Position</b> -can't Abuse of authority or position	<u>On or off-duty</u> Includes reprisal against an employee for whistleblowing and/or for providing information, testimony or otherwise participating in an official investigation or inquiry. It could also include misconduct such as using one's position to avoid a traffic citation.	10-day suspension to removal	14-day suspension to removal	
4	Criminal, infamous or notoriously disgraceful conduct, or other conduct prejudicial to the Government	<u>On or off-duty</u> Includes misconduct which may be related to the mission of the Customs Service. It also could include misconduct which receives adverse new media attention or adverse political focus.	14-day suspension to removal	Removal	5 CFR 735.203 31 CFR 0.213
5	Knowingly and inappropriately associating with informants, former informants or persons connected with criminal activities	<u>On or off-duty</u> Includes any social, sexual, financial or business relationship between employees and informants, former informants or suspected criminals	14 day suspension to removal	Removal	
6	Knowingly and inappropriately assisting violators in activities which jeopardize the law enforcement mission	Violator is a broad term intended to cover employees and others who engage in this type of misconduct	30-day suspension to removal	Removal	
7	Acceptance or solicitation of a bribe	See L-4 for reporting of a bribe	Removal		18 USC 201
1 1	<b>Misuse of Property</b> When willfulness or intent is <u>not</u> a factor, improper or negligent operation of Government owned or leased property	Includes vehicles, vessels, aircraft, or other equipment	Written reprimand to 14-day suspension	14-day suspension to removal	

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# U.S. CUSTOMER SERVICE TABLE OF OFFENSES & PENALTIES

	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
<b>J</b> 2	<b>Misuse of Property-cont</b> Loss of or damage to Government property equipment, records, etc.	Penalty depends on value of property, extent of damage and degree of fault. The Board of Survey may also require additional actions.	Written reprimand to 14-day suspension	14-day suspension to removal	
3	Use of Government property, property under Government custody or the property of others for other than official purposes, excluding vehicles. Use of Government sponsored travel credit card for other than official travel.	Includes use by Government employees in duty status for other than official purposes, querying TECS data for other than official purposes, use of Government credit cards for other than official purposes.	Written reprimand to 14-day suspension	14-day suspension to removal	
4	Unauthorized use of law enforcement equipment, resources, and application of techniques	Includes the use of electronic sensing devices. This charge carries a higher penalty than misuse of other government property as it could potentially jeopardize a law enforcement operation.	30-day suspension to removal	Removal	
5	Willful misuse of (or authorizing the use of) any Government-owned or Government-leased passenger vehicle, aircraft or vessel	31 USC 1349 mandates that an employee who willfully uses or authorizes the use of a Government owned or leased passenger motor vehicle or aircraft for other than official purposes shall be suspended from duty and pay for minimum of one month	30-day suspension to removal	Removal	
<b>K</b> 1	<b>Neglect of Duty</b> Delay in carrying out orders, work assignments, instructions of superiors, policies and procedures		Written reprimand to 2-day suspension	2-day suspension to removal	

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# U.S. CUSTOMS SERVICE

## TABLE OF OFFENSES & PENALTIES

	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
K 2	<b>Neglect of Duty-conf'</b> Interference with other employees in the performance of official duties		Written reprimand to 3-day suspension	3-day suspension to removal	
3	Sleeping on the job, inattention to duty where there is no potential danger to life or property or potential loss of revenue		Written reprimand to 3-day suspension	3-day suspension to removal	
4	Covering up or attempting to conceal defective work, removing or destroying same without permission		Written reprimand to 5-day suspension	5-day suspension to removal	
5	Failure to comply with rules and regulations in administering proper disciplinary action or delegated authority	May involve taking improper disciplinary action to preclude appropriate action	Written reprimand to 14-day suspension	14-day suspension to removal	
6	Negligent or careless performance of assigned duties where an inspection or other Customs enforcement function is substantially and negatively impacted		5-day to 14-day suspension	14-day suspension to removal	
7	Failure to observe established policies or procedures in the apprehension or detention of suspects or violators	Transportation of prisoners and leaving post while on guard or protective duty	7-day to 14-day suspension	14-day suspension to removal	
8	Sleeping on the job, inattention to duty where there is potential danger to life or property or revenue is lost		14-day suspension to removal	Removal	
9	Intentional or reckless disregard of rules governing arrests, searches, seizures		30-day suspension to removal	Removal	Rule 41 of the Federal Rules of Criminal Procedure

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# U.S. CUSTOMS SERVICE

## TABLE OF OFFENSES & PENALTIES

	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
<b>L</b> 1	<b>Reporting Responsibilities/Obligations</b> Failure to timely report arrest to superiors and/or Internal Affairs		Written reprimand to 3-day suspension	3-day suspension to removal	
2	Concealment of or failure to report, missing, lost, damaged or misappropriated government funds or property		Written reprimand to 5-day suspension	5-day suspension to removal	
3	Failure to report an accident or injury to a person or damage to property arising from acts committed or occurring within the scope of employment		Written reprimand to 5-day suspension	5-day suspension to removal	
4	Failure to promptly report an attempted bribe		Written reprimand to 10-day suspension	10-day suspension to removal	
5	Failure to promptly report violations of laws enforced by Customs Service	Includes importer violations	3-day to 5-day suspension	5-day suspension to removal	
6	Failure to report to Internal Affairs information concerning violation of any law, policy, or procedures by a Customs Service employee and/or any act or failure to act		3-day to 14-day suspension	14-day suspension to removal	
<b>M</b> 1	<b>Safety/Health</b> Failure to observe precautions for personal safety, posted rules, signs, written or oral safety instructions, or to use protective clothing, equipment		Written reprimand to 14-day suspension	14-day suspension to removal	
2	Endangering the safety of or causing injury to personnel through carelessness or failure to follow instructions		5-day suspension to removal	14-day suspension to removal	
3	Willful, wanton or reckless disregard for the safety of others	Piloting aircraft too low or acrobatically	30-day suspension to removal	Removal	

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<b>N</b> 1	<b>Security</b> Violation of security procedures covering material classified as sensitive to the Government	Includes both physical and computer security	Written reprimand to 5-day suspension	5-day suspension to removal	Security Handbook
2	Unauthorized disclosure of material classified or sensitive to the Government	Includes improper disclosure of information from Grand Jury, Title III and TECS, ACE, ACS, NCIC and other Customs computerized systems to include appeal/complaint proceedings	14-day suspension to removal	Removal	18 USC 1030; TECS, Security Handbook, Rule 6e of the Federal Rules of Criminal Procedure
<b>O</b> 1	<b>Theft</b> Unauthorized use, removal or possession of a thing of value belonging to another employee or private citizen		Written reprimand to 14-day suspension	14-day suspension to removal	
2	Actual or attempted theft or other unauthorized taking or diversion of funds or property owned or controlled by the Government	Includes intentional destruction, concealment or alteration of official documents; conversion; diminishing value of property or amount, is immaterial funds negligible when Customs Service has mission related interest in misconduct	Written reprimand to removal	14-day suspension to removal	18 USC 641
<b>P</b> 1	<b>Unethical Conduct</b> Borrowing substantial sums of money from a subordinate employee, securing a subordinate's endorsement on a loan, or otherwise having a subordinate assume the financial responsibility of a superior		Written reprimand to 3-day suspension	3-day suspension to removal	5 CFR 2635.702(a)
2	Failure to report the employment of family members in violation of 31 CFR 3101.110(b)		Written reprimand to 3-day suspension	3-day suspension to removal	5 CFR 2635.502

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## TABLE OF OFFENSES & PENALTIES

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<b>3</b>	<b>Unethical Conduct - con't</b> Failure to obtain prior written approval before engaging in outside employment		Written reprimand to 3-day suspension	3-day suspension to removal	31 CFR 3101.104
<b>4</b>	Direct or indirect solicitation or acceptance of a gift from a subordinate		Written reprimand to 5-day suspension	5-day suspension to removal	5 USC 7351 5 CFR 2635.301 (Subpart C)
<b>5</b>	Direct or indirect bidding or purchase at auction or sale of Government property under direction or incident to the function of the Customs Service		Written reprimand to 14-day suspension	14-day suspension to removal	31 CFR 3101.103
<b>6</b>	Seeking employment with persons or businesses affected by the performance or non-performance of the employee's official duties		Written reprimand to 14-day suspension	14-day suspension to removal	5 CFR 2635.601 (Subpart 5)
<b>7</b>	Direct or indirect solicitation or acceptance of gifts from prohibited sources given because of an employee's official position	Prohibited source, for example, is any person who is or is seeking to do business with Customs Service	Written reprimand to 14-day suspension	14-day suspension to removal	5 CFR 2635.200 (Subpart B)
<b>8</b>	Conflict of interest with the mission of the Customs Service	For example, role as an officer in an organization with or without pay, certain financial interests	Written reprimand to 14-day suspension	14-day suspension to removal	5 CFR 2635.403 (Subpart D) 5 CFR 2635.501 (Subpart E) 18 USC 205
<b>9</b>	Engaging in political activity which violates the Hatch Act		Written reprimand to 14-day suspension	14-day suspension to removal	5 USC 7323 & 7324 5 CFR 734.301 5 CFR 734.701
<b>10</b>	Soliciting or giving a gift or donation to an official superior in violation of 5 CFR 2635.302		Written reprimand to 14-day suspension	14-day suspension to removal	

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	NATURE OF OFFENSES	EXPLANATORY NOTES	FIRST OFFENSE	SECOND/ SUBSEQUENT OFFENSES	REFERENCES
<b>P</b> 11	<b>Unethical Conduct-conflict</b> Giving the appearance of a conflict of interest or of violating the law or the ethical standards of conduct		Written reprimand to 14-day suspension	14-day suspension to removal	5 CFR 2635 5 CFR 3101
12	Use of public office for private gain		14-day suspension to removal	Removal	5 CFR 2635.702 (Subpart G)
13	Engaging in outside employment prohibited by 31 CFR 3101.110	For example, working as or for a broker	14-day suspension to removal	Removal	31 CFR 3101.110 5 CFR 2635.801 (Subpart H)
<b>Q</b> 1	<b>Other</b> Failure to honor just financial obligations in a prompt and timely manner		Written reprimand	Written reprimand to removal	18 USC 228
2	Failure to maintain a neat, clean and businesslike appearance or to comply with uniform/dress standards while on duty		Written reprimand to 2-day suspension	3 -day suspension to removal	
3	Gambling or betting on Government premises	Includes gambling on the Internet	Written reprimand to 5-day suspension	5-day suspension to removal	5 CFR 735.201

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# **Appendix L**

## **Information Forwarded to Customs Staff About the Personal Search Process**

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Throughout this revised edition of the Personal Search Handbook, you will find a number of significant changes from the March 1997 edition. The reasons for the changes summarized below are discussed in the Message from the Commissioner.

1. A Customs supervisor must approve all patdown personal searches.
2. A supervisor must fill out a Supervisor's Check Sheet (appendix C in the handbook) for all negative personal searches. This check sheet ensures that persons who were searched receive information about why they were searched and provides mechanisms for receiving their feedback. They may give feedback either by speaking immediately to a supervisor or passenger service representative, or later by filling out a comment card.
3. Any person delayed for two hours for a personal search will be given the opportunity to have a Customs officer notify someone, including an attorney, of the delay (attachment 3 in the handbook) unless probable cause has been developed.
4. A port director must approve all searches that require moving a person to a medical facility for a medical examination. In the event of prolonged detention (eight hours or longer) where the Assistant U.S. Attorney (AUSA) determines that probable cause has not been developed, but reasonable suspicion does exist, the port director must approve further detention.
5. Customs officers can consult with Customs counsel at any time. Such consultation is mandatory for all medical examination.
6. When Customs detains a person for eight hours, the local U.S. Attorney's Office must be contacted. If an AUSA believes probable cause has been established, the AUSA will apply for a warrant before a magistrate.

- 7. If, after a person has been detained for eight hours and an AUSA believes reasonable suspicion exists, it is within the sole responsibility of the Customs Service to determine whether or not the detention shall continue. If the AUSA believes that reasonable suspicion does not exist, the Customs Service will release the detained person.**
- 8. When taking a person to a medical facility for a medical examination, Customs officers are required to explain the process and the timelines, without jeopardizing law enforcement issues (attachment 4 in the handbook).**